B

GENERAL AVIATION REVITALIZATION ACT OF 1993

(103–40)

4. P 96/11: 103-40

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 3087

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO ESTABLISH TIME LIMITATIONS ON CERTAIN CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS, AND FOR OTHER PURPOSES

OCTOBER 27, 1993

Printed for the use of the Committee on Public Works and Transportation

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ISBN 0-16-043922-1

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JACK SCHENENDORF, *Minority Staff Director*

MEMORANDUM

TO: Members of the Subcommittee on Aviation

FROM: Committee's Aviation Staff

DATE: October 25, 1993

This hearing will consider product liability problems faced by the general aviation manufacturing industry and the relationship of product liability to the industry's recent decline. A focal point will be H.R. 3087, the General Aviation Revitalization Act of 1993, introduced by Congressmen Glickman and Hansen with 241 cosponsors. H.R. 3087 seeks to lessen the burden of product liability on general aviation manufacturers. The bill provides that in lawsuits arising from general aviation accidents, damages may not be collected from a manufacturer if the accident occurred more than 15 years after the aircraft was first delivered or, with respect to problems caused by a faulty replacement part, more than 15 years after the date on which that part was added to the aircraft. This type of legislation is commonly referred to as a "statute of repose."

I. PRIOR LEGISLATION

In the 100 and 101st Congresses, the Committee on Public Works and Transportation reported comprehensive bills establishing uniform federal standards for accident cases involving general aviation aircraft. These bills dealt not only with statutes of repose, but also with such issues such as comparative liability and general standards of liability. These bills were also referred to the Committee on the Judiciary and the Committee on Energy and Commerce. The other two Committees did not take action in either Congress on the legislation, so the bills were never considered by the full House.

II. NEED FOR LEGISLATION

The legislation responds to the serious decline in the manufacture and sale of general aviation aircraft by United States companies. In 1979, United States companies manufactured more than 17,000 general aviation aircraft. This output rapidly declined in the early 1980s to the point where only 2,600 aircraft were produced in 1983. The recent recession has caused a further decline, to 899 aircraft in 1992.

The decline in the number of aircraft produced has been more pronounced than the decline in revenues realized. The latter declined from $2.2 billion in 1978 to $1.8 billion in 1992. The reason for the slower decline in revenues is that the aircraft manufactured in the 1990s are largely business jet aircraft which are considerably more expensive now than they were in the late 1970s.

The decline in aircraft manufactured has been most pronounced for the less expensive piston aircraft. The number of single engine piston aircraft manufactured declined from 14,000 aircraft in 1978 to about 500 in 1992.

In terms of particular companies, three companies, Beech, Cesna, and Piper, have dominated general aviation aircraft manufacturing. Looking at piston aircraft production, Beech produced 14 models and 1,100 units in 1978; this declined to 5 models and 203 units in 1992. Piper produced 31 models and 5,510 units in 1978; this declined to 8 models and 84 units in 1992. Piper has been in Chapter 11 bankruptcy since 1991. Cesna, which produced 43 models and 8,600 units in 1978, ceased all piston aircraft production in 1986.

The general aviation aircraft manufacturing industry believes that the cutbacks in production have led to the loss of almost 20,000 jobs in general aviation manufacturing, and an additional 80,000 jobs in sales, service and related industries. To cite one example, the number of Fixed Base Operators (companies which provide services to general aviation aircraft) declined from 10,000 in 1990 to 4,900 in 1991.

The decline in general aviation aircraft sales has been accompanied by massive increases in the industry's liability costs. The amount paid by general aviation manufacturers for liability awards and for settlement and defense costs increased from $24 million in 1977 to more than $200 million in 1987. Although there has been no systematic survey of overall industry costs since 1987, the industry believes that the high costs have continued. This was confirmed by a study undertaken by an investment firm, First Equity, which indicated that between 1987 and 1992, the industry's paid claims and out-of-pocket expenses for product liability totalled about $250 million a year.

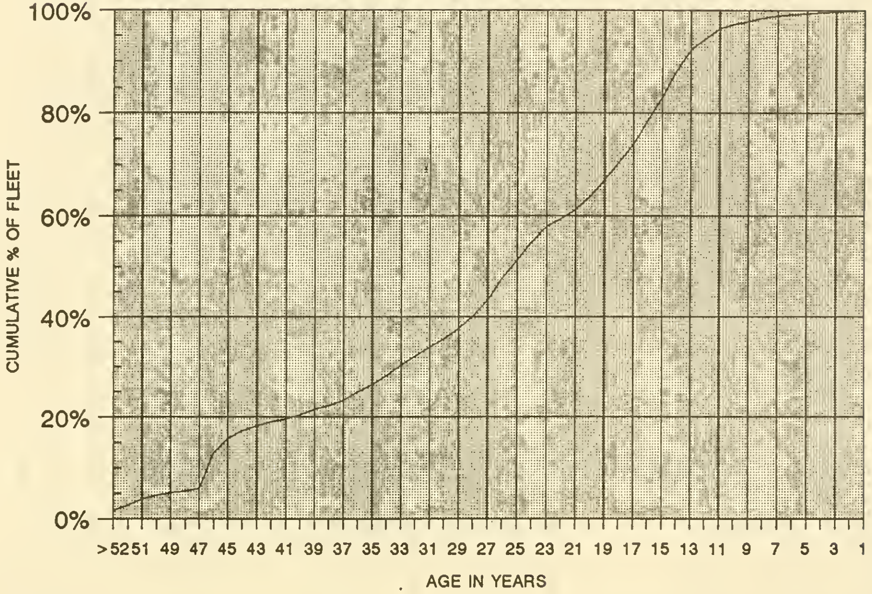
The industry believes that excessive product liability costs have priced light aircraft out of the market, and that these costs have been the primary cause of the decline in the production of light aircraft. Those opposing product liability reform, primarily trial lawyers, cite other factors as the primary cause of the decline, including too many aircraft manufactured in the late 1970s, increased fuel costs, recessions, high interest rates, increased costs of pilot training, and increased competition from airlines providing low fare service under deregulation.

III. Glickman-Hansen Bill

The Glickman-Hansen bill seeks to cut the expenses of product liability by establishing a 15 year statute of repose. The bill covers aircraft designed for a maximum capacity of less than 20 seats, not engaged in scheduled passenger carrying operations. This would relieve the aircraft manufacturers from exposure to lawsuits for most of the existing fleet. As indicated by the following chart, more than 80% of the general aviation fleet is at least 15 years old.

AGE OF THE U.S. GENERAL AVIATION FLEET

(DEC 92)



Registered Aircraft

Prepared by: General Aviation Manufacturers Association

Under the Glickman-Hansen bill, however, parts manufacturers could be liable in cases in which the aircraft had been manufactured more than fifteen years ago. If an accident was caused by a defective part, the starting date for the statute of repose would be the date on which the part was added to the plane. By the time a plane becomes 15 years old, it has a large number of replacement parts which are added to the plane after its original date of manufacture.

The Public Works and Transportation Committee's report on a more comprehensive product liability bill in 1989, gave the following justification for the twelve year statue of repose included in that bill:

> "As an aircraft gets older, it is more likely to have had a number of owners, and gone through a number of modifications and major maintenance procedures. This makes it increasingly difficult to determine whether the manufacturer or some other person used to repair the aircraft is primarily responsible for a defect. In addition, it is not reasonable to expect a product to operate safely forever. Many states have recognized the need for limits by adopting statutes of repose ending a manufacturers liability after a specified period."

IV. RECOMMENDATION OF AIRLINE COMMISSION

The Glickman-Hansen bill is consistent with the recent recommendations of the National Commission to Ensure a Strong Competitive Airline Industry. In its August report, the Commission found that "...enactment of legislation limiting the liability of general aviation manufacturers would help regenerate a once-healthy industry and help create thousands of jobs."

V. POSITIONS OF OTHER ORGANIZATIONS

The Glickman-Hansen bill is supported by the National Aviation Association's Coalition. The coalition includes virtually all major aviation groups, including groups representing airlines, general aviation aircraft owners and pilots, aircraft manufacturers, airports, general aviation service companies, business aircraft operators, and state aviation officials.

In the past, the Association of Trial Lawyers and some general consumer groups have opposed more comprehensive general aviation liability legislation. So far as we are aware, these organizations have not taken a position on Glickman-Hansen.

VI. RELATIONSHIP OF PRODUCT LIABILITY AND FAA SAFETY REGULATIONS

An important issue, which has been brought into prominence by the recent Court of Appeals decision in Cleveland v. Piper Aircraft (United States Court of Appeals 10th Circuit #91-2065), is the relationship between product liability litigation and FAA regulations. More specifically, if FAA has approved the design of an aircraft, can a manufacturer still be held liable in a product liability case for not incorporating safety features which were not required by FAA?

Opponents of product liability reform argue that it is important to allow recovery for failure to go beyond FAA requirements because this will encourage manufacturers to enhance the safety of their aircraft. On the other side of the issue, general aviation manufacturers argue that they do not need this encouragement. The manufacturers cite improvements during the general aviation safety record in the 1950s and 1960s, before the litigation explosion. The manufacturers also point out that NTSB investigations almost never find design defects to be the probable cause of an accident.[1] Other arguments were presented by the Department of Transportation in its brief in the Piper case arguing that the courts should not impose requirements beyond those imposed by FAA.

> "More stringent common law standards [imposed in product liability cases by state courts] would displace the Federal Government's determination that such safety measures are either unnecessary or unwarranted. And it would substitute for the carefully crafted Congressional scheme, a patchwork of divergent common law standards--standards that are fashioned by a lay jury without any expertise in the field, that are applied without any regard for the need for uniform regulation, and that are not based on any consideration of the impact of such standards of care on the development of air commerce."

The specific question in the Piper case was: when FAA had approved the design of an aircraft, could the jury nonetheless be allowed to consider whether Piper had been negligent for not including design features not required by FAA: particularly, better forward vision and rear seat shoulder harnesses. Basically, this was a question of whether the Federal Aviation Act, which requires that FAA regulate aircraft design, preempts a state from implicitly imposing additional requirements through liability cases. The 10th Circuit held that the Act does not preempt state action.

---

[1] A survey by Beech indicated that they were involved in 203 accident cases between 1983 and 1986. In none of these cases did NTSB find design or manufacturing defects to be the probable cause of the accident. The average cost to Beech of handling each of these cases was $530,000.

The major rationales by which the Court reached this decision were:

- The Court held, as a general principle governing the case, that it should not be found that a federal law preempts state authority, unless the federal law indicates that preemption is "the clear and manifest purpose of Congress."
- The Court cited the "savings clause" in the Federal Aviation Act as an indication that Congress did not intend preemption. The savings clause provides that "nothing contained in this Act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."
- The Court cited the specific provision in the Federal Aviation Act that preempts the states from regulating airline rates, routes, and services. The court held that this provision indicates a congressional intention not to preempt the States from taking action in other areas. (As stated by the Supreme Court in another

case: "enactment of a provision defining the preemptive reach of a statute implies that matters beyond that reach are not preempted.")

- On the specific facts of the case, the court found that it was not "impossible" for a manufacturer to meet both state common law standards and federal regulations, either physically or because a state standard would be an obstacle to the Congressional purpose. Piper could have improved visibility by simply raising the pilot's seat. Although FAA did not require shoulder harnesses, the court determined that it would not have been inconsistent with FAA standards to install shoulder harnesses.

VII. EXPECTED WITNESSES

The Subcommittee is expecting to hear testimony from witnesses representing the Department of Transportation, the General Aviation Manufacturers Association, the Aircraft Owners and Pilots association, the National Business Aircraft Association, the Aerospace Industries Association, the International Association of Machinists, and the Aircraft Electronics Association.

The Association of Trial Lawyers of America was notified of the hearing but decided against testifying.

103D CONGRESS
1ST SESSION

H. R. 3087

To amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1993

Mr. GLICKMAN (for himself, Mr. HANSEN, Mr. CARR of Michigan, Mr. MICHEL, Mr. MINETA, Mr. SHUSTER, Mr. OBERSTAR, Mr. CLINGER, Mr. INHOFE, Mr. LIGHTFOOT, Mr. CUNNINGHAM, Mr. ALLARD, Mr. ARCHER, Mr. ARMEY, Mr. BACCHUS of Florida, Mr. BACHUS of Alabama, Mr. BAKER of California, Mr. BAKER of Louisiana, Mr. BALLENGER, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mrs. BENTLEY, Mr. BEREUTER, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BLACKWELL, Mr. BLILEY, Mr. BLUTE, Mr. BOEHLERT, Mr. BOEHNER, Mr. BONILLA, Mr. BORSKI, Mr. BOUCHER, Ms. BROWN of Florida, Mr. BROWN of California, Mr. BUNNING, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALLAHAN, Mr. CALVERT, Mr. CANADY, Mr. CANTWELL, Mr. CLYBURN, Mr. COLLINS of Georgia, Miss COLLINS of Michigan, Mr. COMBEST, Mr. COPPERSMITH, Mr. COX, Mr. CRAMER, Mr. CRANE, Mr. CRAPO, Ms. DANNER, Mr. DARDEN, Mr. DEAL, Mr. DELAY, Mr. DE LUGO, Mr. DERRICK, Mr. DICKS, Mr. DOOLEY, Mr. DOOLITTLE, Mr. DORNAN, Mr. DUNCAN, Ms. DUNN, Mr. DURBIN, Mr. EMERSON, Mr. EVERETT, Mr. EWING, Mr. FISH, Mr. FOGLIETTA, Mrs. FOWLER, Mr. FRANK of Massachusetts, Mr. FRANKS of Connecticut, Mr. GALLEGLY, Mr. GALLO, Mr. GEKAS, Mr. PETE GEREN of Texas, Mr. GIBBONS, Mr. GILCHREST, Mr. GILLMOR, Mr. GILMAN, Mr. GINGRICH, Mr. GORDON, Mr. GOSS, Mr. GRAMS, Mr. GRANDY, Mr. GREENWOOD, Mr. GUNDERSON, Mr. HALL of Ohio, Mr. HALL of Texas, Mr. HANCOCK, Ms. HARMAN, Mr. HASTERT, Mr. HAYES, Mr. HEFLEY, Mr. HEFNER, Mr. HERGER, Mr. HOBSON, Mr. HOEKSTRA, Mr. HOKE, Mr. HOLDEN, Mr. HORN, Mr. HOUGHTON, Mr. HUFFINGTON, Mr. HUTCHINSON, Mr. HUTTO, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mr. JACOBS, Mr. JOHNSON of Georgia, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. JOHNSTON of Florida, Ms. KAPTUR, Mr. KASICH, Mr. KIM, Mr. KINGSTON, Mr. KNOLLENBERG, Mr. KOLBE, Mr. KYL, Mr. LAUGHLIN, Mr. LEACH, Mr. LEHMAN, Mr. LEWIS of California, Mr. LEWIS of Florida, Mr. LINDER, Mr. LIVINGSTON, Mr. MACHTLEY, Mr. MANZULLO, Mr. MARTINEZ, Mr. MATSUI, Mr. MAZZOLI, Mr. MCCANDLESS, Mr. MCCOL-

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A BILL

To amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "General Aviation Revitalization Act of 1993".

SEC. 2. TIME LIMITATION ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

Title XI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1510–1518) is amended by adding at the end the following new section:

"SEC. 1119. TIME LIMITATION ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

"(a) IN GENERAL.—No civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any component, system, subassembly, or other part of the aircraft, if the accident occurred—

"(1) more than 15 years after—

"(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

"(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

"(2) with respect to any component, system, subassembly, or other part which replaced another product originally in, or which was added to, the aircraft, and which is alleged to have caused the claimant's damages, more than 15 years after the date of the replacement or addition.

"(b) GENERAL AVIATION AIRCRAFT DEFINED.—For the purposes of this section, the term 'general aviation aircraft' means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger carrying operations as defined under regulations issued under this Act.

"(c) RELATIONSHIP TO OTHER LAWS.—This section supersedes any Federal or State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable deadline for such civil action established by subsection (a).".

SEC. 3. CONFORMING AMENDMENT.

The table of contents contained in the first section of the Federal Aviation Act of 1958 is amended by adding at the end of the matter relating to title XI of such Act the following:

"Sec. 1119. Time Limitation on Civil Actions Against Aircraft Manufacturers.
    "(a) In general.
    "(b) General aviation aircraft defined.
    "(c) Relationship to other laws.".

○

GENERAL AVIATION REVITALIZATION ACT OF 1993

WEDNESDAY, OCTOBER 27, 1993

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2261, Rayburn House Office Building, Hon. James L. Oberstar [chairman of the subcommittee] presiding.

Mr. Oberstar. The Subcommittee on Aviation will come to order.

The focus of today's hearing is H.R. 3087, the General Aviation Revitalization Act of 1993. This bill was introduced by our colleagues, who are with us this morning, Congressman Glickman and Congressman Hansen, who have been very strong advocates for this legislation, and cosponsored by 241 of our colleagues.

The bill establishes a 15-year statute of repose for aviation accident cases involving general aviation aircraft. The bill was introduced in response to not just a serious but precipitous—astonishingly precipitous decline in the manufacture and sale of general aviation aircraft by U.S. firms.

In 1979, U.S. manufacturers produced some 17,000 general aviation aircraft. By early 1983 the output had declined to 2,600. The recession has caused an even further decline to 899 aircraft in 1992.

The drop in manufacturers has been especially pronounced for the less expensive piston aircraft. The number of single-engine aircraft manufactured dropped from 14,000 in 1978 to 500 such aircraft in 1992.

Of course, along with the loss of production comes a loss of jobs, and that is the real reason we are here and concerned that this industry estimates that since 1978, it has lost over 20,000 jobs in general aviation manufacturing and another 80,000 jobs in sales, service, and related industries.

The decline in domestic production of general aviation aircraft has also been accompanied by a worsening of our position in international trade.

In 1980, the United States exported some $120 million in single engine piston aircraft but no imports. By 1992, our exports had declined to $30 million, while imports increased to $25 million. If those trends continue, we will have a negative balance of trade in this sector of aviation, an industry where we have always had dominance, where the United States has always been the world leader, and where we have historically had a very substantial surplus in our balance of trade.

The remedy that we propose for at least a part, and a major part, of the industry's problems is the legislation pending before us to lower the high liability costs that have plagued this industry. The amounts paid by general aviation manufacturers for liability awards for settlements for defense costs, jumped from $24 million in 1977 to over $200 million in 1987. And those costs have only continued to escalate with estimates in the range of $250 million most recently.

H.R. 3087 would reduce product liability expense by establishing a 15-year statute of repose, meaning that a manufacturer could not be sued for incidents occurring more than 15 years after an aircraft was first delivered.

This doesn't mean that there is an amnesty for all aircraft over 15 years of age from lawsuit. In a case where a problem is caused by a defective part, the 15-year period would not start until the date the part was installed on the aircraft.

As our hearings today will demonstrate—and the testimony is very substantial on all of these points—there is wide support by pilots, by the general aviation pilots, by the manufacturers, by support industries, and by labor for this legislation. The bill was also supported, or at least the concept of the bill was supported by the Presidential Commission to Ensure a Strong Competitive Airline Industry.

In two previous Congresses, our committee has held hearings on this legislation and favorably reported it from subcommittee and favorably reported it from full committee, but it died in the other two committees of concurrent jurisdiction.

We hope that this year marks a turning point with more than 240 House Members as cosponsors of the bill. And we hope that with the Speaker's attention to this issue that he will find a way to prod the other committees at least to hold hearings and report the bill and give us an opportunity, even if they report it negatively, report the bill so that we get it to the Floor and take action on it in this Congress.

I want to thank my colleague from Pennsylvania, Mr. Clinger, for his long support and interest in and participation in the development of this legislation and on our hearings.

And the Chair recognizes the gentleman from Pennsylvania.

Mr. CLINGER. Thank you, Mr. Chairman.

And I cannot think of any modern American manufacturing industry that has suffered such a dramatic decline of business at the hands of the legal system as has general aviation.

General aviation was an industry fostered and developed by American entrepreneurs. Less than two decades ago, we commanded a lion's share of the world's market for piston-powered aircraft. Today, our share has been reduced to the barest fraction. The demise of the industry is not the result of poor craftsmanship. To the contrary, American built GA aircraft continue to perform 20 and 30 years after they were produced, which is a testament to the solid design and skill of American manufacturers. The demise can be laid principally to the extraordinarily high liability costs borne by the manufacturers. And that cost alone is the reason we are faced with this problem.

Our economy has suffered tremendously as the result of the catastrophic downturn in this important industry. It is estimated that 100,000 jobs have been lost. Although it can be argued that liability alone is not fully responsible for these losses.

I can personally attest to the devastation suffered by the industry. My district includes Lock Haven, Pennsylvania, once the proud home of Piper Aircraft.

Today that manufacturing facility in Lock Haven is an empty shell, and we are trying to find somebody to fill up the space and create jobs. At one time in that facility Piper employed over 3,000 area residents. And I can say with complete certainty that Lock Haven has not yet fully recovered from the loss of Piper.

Holding domestic manufacturers accountable for planes built 20 or 30 years ago has had the twisted effect of allowing foreign entrants into the market and putting them at a highly advantaged position since they have not sold planes in years past for which they can now be held liable.

American manufacturers, on the other hand, must charge dramatically higher prices for new aircraft in order to recoup legal expenses pushing costs so high as to price the aircraft well above the customer's willingness to pay.

I have worked with you, Mr. Chairman, in two previous Congresses when this committee reported broad aviation product liability reform legislation, only to watch the bills die in the Judiciary Committee.

I am hearted to note Mr. Glickman and Mr. Hansen's current product liability reform legislation, H.R. 3087, is very narrowly targeted, and it is my hope that this bill will be more marketable than we have seen in the past.

I also can't help but believe that having over half the House as cosponsors will improve its chances. General aviation has been the foundation upon which military and commercial aviation has built their pilot corps. GA makes a major contribution to our business economy, efficiently moving executives and materials in a manner that could not be filled by commercial aviation. GA is a lifeline to many rural, hard-to-reach communities such as I represent.

The industry needs the protections I believe offered by H.R. 3087. This industry has suffered tremendously. Our economy has suffered, and more harm may come if we don't put some reasonable limitations in place.

Aircraft builders shouldn't be held eternally liable for their products. I would be hard pressed to think of any other manufacturing industry similarly affected by such a burden. It is time to do something about it.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you. I may sympathize and appreciate personally the pain that your community, Lock Haven, has experienced, having lost thousands of jobs in the taconite industry. I know how devastating that is.

Are there other Members that wish to make opening comments? The gentleman from Oklahoma.

Mr. INHOFE. Thank you, Mr. Chairman. We have gone through this exercise so many times. I can remember when I was first elected to Congress in the 100th Congress, I had every expectation that we would be able to go back home and tell the aviation industry that because it has a strong argument, we were going to be able to do something about product liability, only to find out that the American Trial Lawyers Association is a much stronger group than we had thought they were.

I have lost count the number of times that I recited the litany for Members just how serious it is and the dire consequences for aviation if something isn't done.

I think it was GAMA who came up with the figures on the number of piston engine aircraft that were delivered in 1978. In 1992 the number dropped to 880, and I understand it was down to 608 this year, and it is expected next year to be 450 piston aircraft.

The bottom line is if you will listen to the people such as the President of Piper Aircraft when they had to go into Chapter 11, they stated that the major problem, was that they could not be globally competitive and offset the cost of exposure for product liability.

One of the studies that was presented to this committee by Beechcraft, indicated it took about $80,000 a vehicle to offset the exposure for product liability. And that being the case, it is impossible to be globally competitive.

Last week I was coming up here and I was flying my Piper Cherokee, and I stopped for gas in Owensboro, Kentucky. I have stopped there for years, and I had for many years, and I can remember that was one of the most vibrant GA airfields anywhere in the country.

And I would swear when we came through this last time you could have taken an AK–47 and done a 350 and not hit a soul there. I think we recognize the reasons for this. We have known that this Subcommittee on Aviation has been very friendly to Mr. Glickman's and Mr. Hansen's efforts in the past as has our general committee, Public Works and Transportation.

The problem has been in the Judiciary Committee. And even though there may be disagreement at this table, I feel very strongly that my reform of the discharge petition process is going to be the reason that we are going to get a fair hearing now for the first time in the Judiciary Committee, and actually this can become a reality.

I would like to think of this not just in the tunnel vision that those of us who have spent our lifetime in aviation are concerned with but the overall problem as the Chairman said, we have gone from producing a product that was a major export item to turning it into a major import item almost entirely because of trying to offset the cost of product liability.

So I applaud Mr. Glickman and Mr. Hansen for their perseverance in staying with this and have enjoyed working with them on this, and I think this is the year that it is going to become a reality.

Thank you.

[Mr. Inhofe's prepared statement follows:]

STATEMENT OF HON. JAMES M. INHOFE

Mr. Chairman, despite the best efforts of this subcommittee, product liability reform for general aviation has remained an elusive dream. As a freshman member of this subcommittee in the 100th Congress, I expected that I would be able to go home and assure my GA pilots that product liability reform for general aviation was feasible and that there was hope for the dying general aviation industry. That was before I learned about one of the most powerful lobbying organizations on the Hill, the American Trial Lawyers Association. They not only successfully prevented GA product liability reform in the 100th Congress but also in the 101st. Although the House did not act on GA product liability reform in the 102d Congress, the Senate came very close to approving language similar to what we will be discussing today. Once again, the American Trial Lawyers Association was successful in protecting their own interests at the expense of the American public.

I have lost count of the number of time I have recited the litany for Members on just how serious this is and the dire consequences it has for aviation. However, please bear with me as I briefly highlight the major the reason for product liability reform.

According to figures provided by the General Aviation Manufacturers Association, the number of piston engine aircraft delivered in 1978 was 17,811. In 1992, that number dropped to 880 and in 1993, it is anticipated that only 450 piston aircraft will be delivered. Piper Aircraft Corp., which made as many as 5,200 planes a year in now working to reorganize under bankruptcy proceedings. The president of Piper, Chuck Suma noted that product liability was the contributing factor to Piper's bankruptcy.

In less than 20 years an industry that once led the world in technological development has been virtually decimated by a legal system that encourages litigation. The sharp drop in production of GA aircraft can be laid squarely at the feet of product liability. This is clearly illustrated by a Beech Aircraft study of 203 claims filed between January 1, 1983 and December 31, 1986.

The Beech study found that the average cost to them, win, lose or draw, was $530,000. The average dollar value of the plaintiffs claims per accident was $9,860,000. Incredibly enough, this is despite the fact that according to the NTSB 118 of the accidents were due to pilot or operator error, 22 due to maintenance, 21 due to weather, 1 due to air traffic control, 1 due to other causes and 63 due to unknown or undetermined causes. None were due to design or manufacturing defect.

H.R. 3087, is a first step in bringing some sanity to a liability system that is clearly out of whack. The bill would limit to 15 years the amount of time an original equipment manufacturer or component parts manufacturer can be liable for a design or manufacturing flaw.

Mr. Chairman, I know you share my concern on this issue and will work with the sponsors of this bill to move it through Public Works. Unfortunately, we also need to get it through the Judiciary Committee. However, because of my discharge reform, for the first time, we believe we have a reasonable chance and expect that the House will be able to vote on product liability reform before the end of the 103d Congress.

As an original coauthor of this bill, I want to thank you for your support and willingness to move this issue quickly so that we can concentrate our efforts on the Judiciary Committee. Thank you again Mr. Chairman and I look forward to hearing from our witnesses.

Mr. OBERSTAR. Thank the gentleman.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman.

I am a cosponsor of H.R. 3087. I commend Mr. Glickman and Hansen for their initiative in this area. And I think Jim Inhofe is precisely correct. Now that we have the discharge petition out in the open, we will get the same number of responses to your bill to sign this, and we will have, at last, legislation in this area.

Mr. OBERSTAR. Mr. Collins.

Mr. COLLINS of Georgia. Thank you, Mr. Chairman.

I just want to say thank you for the opportunity to sit in on this hearing and for your holding this hearing today.

I think Congressman Inhofe made a very good statement toward the reform of the general aviation industry.

I appreciate the gentlemen at the table and their work. I have heard from a number of people in the Third District of Georgia who fully support their efforts, and I too support them.

And I would like permission to enter into the record a formal statement.

Mr. OBERSTAR. Without objection.

[Mr. Collins' prepared statement follows:]

STATEMENT OF HON. MAC COLLINS

Mr. Chairman, I appreciate your holding this hearing today on H.R. 3087, the General Aviation Revitalization Act of 1993, of which I am a cosponsor.

What has happened to the manufacture and sale of general aviation aircraft in the United States in the past decade is tragic. It is astounding that shipments of new aircraft have dropped 95 percent, with 17,000 aircraft being manufactured in 1979, and only 899 in 1992. And 100,000 jobs have been lost during that time. With such statistics, it is high time something is done to curtail the devastating blow of unreined liability, which as significantly contributed to this situation. I believe this country has gone way overboard in its litigious nature, and nowhere is this seen more clearly than in general aviation.

I know this committee has exercised its responsibility in past Congresses to address this situation, but other committees have not acted. Sponsors of this legislation have significantly pared down their legislation this year in an effort to obtain even a small bit of relief. At this point, the bill provides primarily for a 15-year statute of repose. I hope that this committee will act quickly, and that the Judiciary Committee will also see fit to do the same.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The Chair would welcome our first two witnesses and express appreciation to Mr. Glickman and Mr. Hansen for the work they have done in rounding up signatures on the bill that has been introduced, and the efforts that the gentleman from Kansas has made with the Speaker and others in the leadership, the Chairman of the Judiciary Committee, to try to get this moving on the other two tracks that it needs to move.

Mr. Glickman.

TESTIMONY OF HON. DAN GLICKMAN, A REPRESENTATIVE IN CONGRESS FROM KANSAS; AND HON. JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM UTAH

Mr. GLICKMAN. Thank you, Mr. Chairman.

Mr. Chairman, it is an honor to be here. I recall that old song, it is called "Where or When." "It seems we stood and talked like this before." And I can't help but thinking about that song when I am dealing with this issue.

It was 1986 when we first brought this issue, through the efforts of the General Aviation Manufacturers Association, to the attention of the House. At that time, we were producing about 3,000 piston engine planes a year. Now we are down to 7 or 800 as was mentioned before. So the problem has gotten worse as time goes on.

I am not going to read my entire statement. As most of you know, Mr. Hansen and I have been working on this. With his help we have been able to get 249 sponsors. We are at almost 60 percent of the House and moving. No one can get that kind of genuinely bipartisan support unless you have a persuasive proposal and people recognize that we are doing the right thing. I think that we are.

Most people know I am from Wichita, Kansas, known as the air capital of the world, the headquarters of Beech and Cessna and Lear Jet, and where the Boeing Company has a large facility.

Half of the airplanes in the world are made in Wichita, Kansas; but those numbers are changing as the numbers of piston engine airplanes that are made have dropped radically. But today, we have an opportunity that is extremely dependent on this legislation from the standpoint of jobs and the economy.

As you can see, product liability is not an abstract concept. And while I happen to believe that Congress ought to adopt general product liability legislation affecting all products that move in interstate commerce, I do believe that when it comes to aviation, the issue is more poignant.

We have an industry that is Federally regulated from birth to death. There is no State involvement in the regulation of aviation from licensing of pilots to moving through air space. It is a Federal issue.

And, therefore, there is a very strong case to be made that liability laws ought to be Federalized or made uniform because you have an industry that is totally regulated from the Federal side of the picture. And I believe that this bill, if passed, will get a lot of people back to work.

You are going to hear from Russ Meyer, the Chairman of Cessna Aircraft, a distinguished leader in the aviation industry, who has, in the past, made some commitments about the fact that if this bill is passed we will, in fact, see single engine piston airplanes being produced again, employing thousands of people. And for that reason this legislation has been endorsed by the International Association of Machinists.

This is the first year that organized labor has taken an active role in this particular legislation. But that is because their leadership knows that this legislation will mean lots of jobs, thousands of jobs. And this is one of the very few pieces of legislation that I can honestly say that I put my finger on—and Mr. Hansen probably feels the same way—that will produce a specific benefit for working people in this country, that will employ additional people.

In addition to labor, the legislation has the support of manufacturers, has the support of users; and the bill was endorsed by President Clinton's National Commission to Ensure a Strong Competitive Airline Industry.

There was a specific recommendation in the Airline Commission report which endorsed this particular bill. So I think that we have broad support throughout the aviation community.

I would have to say also that a Department of Transportation advisory panel last month released a study predicting a future shortfall of well-qualified pilots and aviation mechanics. This is a point Mr. Clinger mentioned.

The report urges U.S. manufacturers to produce reasonably priced training aircraft by recommending that Congress put limits on excess product liability awarded by the courts. This is a Department of Transportation advisory panel.

To quote the study, "This would enable the United States to be more competitive with foreign manufacturers, currently the principal source of new general aviation and training aircraft used in the United States."

Imagine the principal source of new general aviation and training aircraft used in the United States are foreign manufacturers now. Can one imagine that we would have let that happen 10, 15, 25 years ago? That is what is happening right now.

I am not telling you the entire answer is product liability. But it is certainly a big part of the answer. Traditionally, the U.S. has been the leader in the high-tech aviation industry, but burdensome liability costs have dragged it down so that we are unable to compete.

In 1980 there were 29 manufacturers of U.S. piston aircraft and 15 foreign manufacturers. In 1992, there were 9 U.S. manufacturers and 29 foreign manufacturers of piston aircraft. We must act now before foreign manufacturers, not encumbered by the high liability costs of U.S. manufacturers who have aircraft out there that are 20, 35, 40, and 50 years old, before these people fill the void in our aircraft production.

And I want to close by saying this: The small plane industry is the genesis, the foundation, of the entire aviation industry.

Again this is something Mr. Clinger and Mr. Oberstar talked about. You think about it, when it comes to pilots for the airlines, when it comes to commercial aviation, when it comes to corporate aviation, when it comes to aviation serving rural America, it all starts at the bottom. It doesn't start at the top. United Airlines and American Airlines don't snap their fingers and produce airplanes and people.

It starts from a whole infrastructure of aviation that begins from the ground up, and that is what is being destroyed right now before our very eyes. The beginnings: the kindergarten and the first grade and the second grade.

And I don't mean to imply that it is elemental. I mean to imply it is the basic part of aviation. That foundation is not there anymore. How do you train people without a foundation? It is a very serious problem affecting aviation as a whole.

And just one final point that I would have to say, this has been a troublesome bill to move through the process. This committee has been a hero in that effort. We have a couple of things that are different this year. One is the bill has only been referred to two committees instead of three. Somehow Mr. Dingell did not get his hands on the bill to begin with. I don't know how that happened, but he is actually a friendly soul as it comes to this bill; but the less fingers on it, the better, although he may be hearing me right now and his fingers may be coming in.

Mr. OBERSTAR. He has a spy in this room.

Mr. GLICKMAN. And the second thing is, we have 250 sponsors. And Mr. Inhofe makes a pretty good point, the fact is that periodically in this place you need some sort of leverage on committee chairs who want to hold bills for a variety of reasons. It may be good or bad reasons, but they ought not to be able to close the door and lock it and throw the key away forever and ever, no matter what the support is out there. That is going to be very difficult to happen this time.

And I happen to serve on that particular committee, and we are going to do our best to get the bill moved through it.

I appreciate very much your support on this particular bill, Mr. Oberstar and Mr. Clinger, and the rest of the committee.

Mr. OBERSTAR. You are a strong and persuasive advocate. I wish you could be more persuasive with the other committee.

Mr. HANSEN. Thank you, Mr. Chairman. I appreciate being here on what I consider to be the most important legislation that we are looking at in Congress. I consider this to be the Glickman-Hansen-Inhofe bill.

I was in the Navy during the Korean War stationed in Hutchinson, Kansas. We had PD–4Ys that we were flying on the weekend, and a few of us used to go down to Wichita, the capital of light aircraft. It was a delight to visit Cessna and see how they made those aircraft. I look back, and remember names like Stinson and Navion. I have flown all of those things. I don't know where you could buy one of those airplanes today. There aren't a lot of those old ones around.

A good friend of mine, Jake Garn used to be a Senator. He bought an old Navion, and he has spent the last three or four years trying to rebuild it. He has $90,000 in it. He will never get it done, in my opinion. I am sure the second coming will occur before he finishes it. But Jake likes to fool around with this plane.

When I got out of college I went to work for a large insurance company, and we worked basically on car accidents. It was easy to determine who was at fault. Somebody ran a red light; we have a witness there who saw it; somebody was drunk; somebody was speeding; somebody went through a stop sign. We could always determine who was at fault.

As you go to court and prepare the cases, you look at the jury and it was easy to see how to convince them that Driver A ran a red light and killed somebody. He had a 3.5 blood alcohol level. It was easy to determine liability. That was a simple thing to do.

As a pilot, I look at all of the good folks in the east that learn to fly. When they finally buy their airplane, and they have flown around in the flat country, they decide to take their family to, say, California.

They probably aren't qualified much more than Bishop fly rules. They take off, and all of a sudden, they come into IFR weather. They are not qualified to fly in this. They get into the Colorado Rockies, into my country out in the high Uintas—many of our peaks go 10,000 feet—and all of a sudden, we know from the flight plan that they are supposed to be somewhere and they don't show up.

I used to fly with civil air patrol. And where are these folks? We know that somewhere between Colorado and Nevada there is an airplane down because it didn't come in. Eventually we find that person. Unfortunately it is not like a car accident where someone saw the accident and can be a witness and testify. All we usually find in these rare instances is an airplane. And then, unfortunately, sometimes a dead Pilot and other bodies.

And out of that, what can we determine? Now, let's go back to the jury again. What do they hear? Does anyone see who crossed the line? Does anyone know what happened? Much like the car accidents and all the hundreds of claims and all the trials that we went through, I rarely saw that it was GM's fault, Ford's fault, Chrysler's fault. It would be infinitesimal to find a situation like that.

In the airplane accident it is exactly the same way. The FAA spends a lot of time looking at these cases and what do they find? Pilot error. I say respectfully that I think a lot of pilots are over their heads when they are flying airplanes, and maybe they have too hot an airplane for them to handle.

I remember a flight instructor saying to me, stay within your ability and the capacity of your airplane. That is important. Did we sue General Motors and Ford and Chrysler? If we had done the same thing, there wouldn't be the big three and we would have heard about it in Congress. And we would have been doing something about it. It is important to America that we have the genesis of the car industry which was started here.

Well, the guts of the aircraft industry started in America. My dad used to fly in the First World War in an old Jenny down at Kelly Field, and he knew a guy by the name of Eddie Stimpson—talk about the aircraft he used to make. That is all gone because of a very active plaintiffs bar, when they have the jury there, what are they talking about? Who is there to blame? Blame the big rich Cessna or Beechcraft, but don't say rich or big. And eventually these companies are putting more money into insurance than they are putting into the industry. And so the foreign guys come in and take over.

In America, I would love to hear more about an industry hiring people and building again, but we are hearing about industries laying everyone off.

I have sat on the Armed Services Committee for years, and all we are hearing is about industries laying people off. Wouldn't it be nice if we heard from Beechcraft and Cessna and Piper and a few of the companies that are alive that they could start building aircraft again? That is the important thing, and it is what America needs.

If there ever was a time for this bill to go through, it is now.

I compliment you, Mr. Chairman, on the excellent statement that you made and on the support that we have received from you. And I hope that we will continue to push this and see some success in the 103rd Congress.

Mr. OBERSTAR. Thank you for your statement, and your full testimony will be in the record. I read it last night. It was replete with solid factual information.

Question: What difference will be made by stretching out the 12-year statute of repose to a 15-year statute of repose? Why is that going to make a difference?

Mr. GLICKMAN. I think you would probably have to talk with the manufacturers about 12 or 15 years in terms of actuarially what is involved, average life, and length of airplanes.

I think we felt that a 15-year period was a generally suitable period that would take care of virtually every manufacturing problem that could potentially take place in an airplane flying 15 years.

We have had it 12 years before. Some have proposed 20 years. There have been different numbers suggested, and we felt that 15 years was a suitable period of time over and above the amount of time it takes for a design defect to mainfest itself.

Mr. OBERSTAR. This question is elliptical. It has two points. One is: Does it make a difference technically with respect to the parts covered; and, secondly, does it make a difference with respect to picking up votes?

The ultimate objective is to get a bill passed. Could 15 years do better for us than that 12 years?

Mr. GLICKMAN. I don't think it is a difference in 12 and 15 in terms of parts or length of service type of situation. And we had had 12 years, I think in legislation before.

And I think that we just felt that 15 years, quite honestly, would give us less political problems in as much as it was a little longer period of time but still not so long as to keep that very large insurance tail that exists from having an airplane out there 20, 30, 40 or 50 years. Those are the problems that we are more worried about in terms of the liability chain.

Mr. OBERSTAR. Mr. Hansen, in our legal system, most of the authority for product liability is left to the States. Why in this case should we preempt States for aviation?

Mr. HANSEN. Basically, I think we are going to have a hodgepodge of various pieces of legislation, and many of them are struck down.

In 1978 I was the author of the Products Liability Law in the State of Utah. I thought it was an excellent piece of legislation. And one thing that we put in it was that if the person who bought a certain product took it in his garage, became an engineer and changed it around, that would bar recovery.

We were struck down in Craftsmen Lawn Mowers. I remember one of my friends was sitting on the court and wrote the opinion. We had quite a discussion about that. I won't bore you with the details.

So we are going to have 50 different interpretations of this. And because the aircraft business is worldwide now, and you see Cessnas everywhere in the world, it made sense to me that we made this thing universal and cover the entire U.S.

My response to Dan Glickman's comment about the statute of limitations, let me put on a actuarian hat and say that each year you take this up, the more the exposure is limited to the insurance company. As you may recall, we had conversations about 20 years. That is not quite as palatable to those who build the aircraft. You look at automobiles. How many drive a 27-year-old car? That is the average age of these things.

I am an airport bum, and I watch people hanging around rebuilding engines. And I have hauled them off of mountains with people. You rarely throw an airplane away. You take the parts and build another one somewhere. I would like to find anyone in this room that is driving a 27-year-old car unless they restored it.

If you get in the airplanes and fly around your district, as many of us do, keep in mind that you are in a pretty old bird.

Mr. GLICKMAN. You know, for whatever reason, the Federal Government has not gotten too much into the product liability area with a couple of exceptions. You may recall when it came to vaccines a couple of years back, the government had to limit liability in order to produce influenza vaccines.

There are a couple of areas that have 100 percent Federal involvement. One is pharmaceutical, how you license, prepare, and protect patent wise.

I don't believe there is any State exercising any authority over the quality and nature of a pharmaceutical product. I think that is all done Federally. And the other one, of course, is aviation. I do not believe that States have any regulatory authority whatsoever on the licensing or building of the physical product or the people that operate that product.

Mrs. Clinton is going to propose some medical malpractice liability in her proposal. When asked why she would do that when it has been traditionally a State-by-State thing, she said the Federal Government is going to be taking over so much of the regulatory structure of medicine, that she says that it doesn't seem right that they should have a hodgepodge of 50 liability laws to deal with the malpractice issues.

I am not saying there are parallels in every one of those things, but the fact is the more Federal involvement you have in the issue, the more likely you need a uniform liability law.

Mr. OBERSTAR. Thank you.

Mr. Horn.

Mr. HORN. The National Commission to Ensure a Strong Airline Industry enthusiastically endorse this proposal.

Do you have a commitment from the Clinton administration or any discussions which might lead you to believe that this will be signed by the President if it is passed by Congress?

Mr. GLICKMAN. I don't have personally any commitment from the President. But my judgment is that if it is in that Airline Commission Report—and I have spoken with the assistant attorney general for the civil division, who is an active pilot himself, who has indicated general support for the concept—I believe they would sign the bill.

Mr. OBERSTAR. If the gentleman would yield, the administration was invited to testify but declined because they are formulating a position.

Mr. HORN. This is presumably the FAA? The Department of Transportation?

Mr. OBERSTAR. Right. And Justice.

Mr. HORN. The last question I have would be on the degree to which you are more optimistic about what might happen in the other body, as we euphemistically call the Senate.

Mr. GLICKMAN. One cannot predict anything that the other body does. But I would say that if we were to act and pass the bill out of here, it would be very difficult for the filibuster rule to prevent action on this bill. Not impossible.

But I must tell you that this bill is building up some steam outside of Washington as well. I heard that Paul Harvey discussed it on his radio show. There is a lot more press interest in this bill. So if we are able to move it out of here, I think the Senate will follow along.

Mr. HANSEN. There are a number of Senators who, in the past have been passive on this particular issue, who are now very interested in it taking a very high profile position.

And I personally feel it has an excellent chance in the Senate. But it depends how it leaves this House. If it leaves this House with gusto and is on the track, I think we have a chance.

Mr. HORN. I am glad to hear that we have a few fliers in the other body.

Mr. OBERSTAR. Mr. Inhofe.

Mr. INHOFE. It probably wouldn't hurt for Mr. Glickman and others who are closer to Bill Clinton than I am to maybe make some inquiries because I do know that some statements were attributed to him in October before the election when he talked to the American Trial Lawyers Association that led me to believe that he was not going to be sympathetic. And this would be a good time before it hits him to get some commitments because we are talking about jobs here.

Mr. GLICKMAN. I would tell that you when the airline commission met with the President and went over their specific recommendations—and this was one of the highest recommendations from the airline commission—most of the members of which he appointed, he indicated general support for the recommendations. I know that for a fact. But I agree with you.

Mr. INHOFE. I am familiar with that, and I am familiar with the other four recommendations that are there. And I don't know how he is going to respond to those.

Mr. Hansen, you are right, I am rebuilding a 1940 L–2 reconnaissance plane. And every time you look in there, you think how can you identify when that part was made. And yet when you get in a court of law, if the pocket is deep, they are going to go to that object and say, that is where it is. And you are dealing with so many unknowns, that this is the only solution.

One question that I had that nobody up here on the staff has any answer for is: What is the period of time do they use for repose in some of the other countries? I know it varies country by country. But do we have any information on what our competition in Canada or in Germany or some of the other places——

Mr. GLICKMAN. The civil justice systems are so different in different parts of the world. I don't know.

Mr. INHOFE. I think that we have come to the conclusion that 15 years is liveable, and it will make us competitive again. And I think we need to get on with it.

Mr. OBERSTAR. Mr. Collins.

Mr. COLLINS of Georgia. Thank you, Mr. Chairman.

As a new Member of this body, how long have you been working on this deal?

Mr. GLICKMAN. 1986 was the first time that I introduced a bill on this. It may have been around before then. That is my personal involvement.

Mr. COLLINS of Georgia. Mr. Inhofe referred to perseverance. I read an article in Readers Digest that perseverance is evidenced by the fact that the snail reached the ark. Maybe you will reach the ark this year.

Mr. OBERSTAR. Thank you, very much. We appreciate your presentation this morning.

Mr. GLICKMAN. There is a letter that was addressed to me from F. Lee Bailey that I would like to make a part of the record. He is supporting the legislation.

Mr. OBERSTAR. Without objection, we will make that a part of the record.

[The letter referred to follows:]

BAILEY, FISHMAN, FREEMAN & FERRIN
AN INTERSTATE LAW PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
1400 CENTREPARK BOULEVARD
SUITE 909
WEST PALM BEACH, FLORIDA 33401-7490

(407) 687-3700
FACSIMILE (407) 687-3708

F. LEE BAILEY
ADMITTED FL & MA
KENNETH J. FISHMAN
ADMITTED MA
DONALD J. FREEMAN
ADMITTED FL & PA
MICHAEL J. FERRIN
ADMITTED FL
DANIEL PATRICK LEONARD
ADMITTED MA
DAVID M SCHULTZ
ADMITTED FL

BOSTON OFFICE
66 LONG WHARF
BOSTON, MASSACHUSETTS 02110

(617) 723-1980

May 26, 1993

The Honorable Dan Glickman
U.S. House of Representatives
Washington, D.C. 20515

Dear Dan:

I'd like you to know of my support for a statute of repose applicable to manufacturers of general aviation aircraft. I understand that you and Congressman Jim Hansen plan to introduce legislation along these lines to help address the product liability concerns of the general aviation manufacturing industry.

As an aircraft owner and pilot myself, as well as a former manufacturer (I built more than 500 *Enstrom* helicopters from 1971-1980) I share the concern of AOPA and others who have pointed out the startling decline of the industry during the past 15 years. During 1978, 18,000 new aircraft were manufactured and sold in the United States. In contrast, only 900 new aircraft were sold during all of 1992.

As AOPA has often emphasized, pilots are the likely victims of accidents which result from defective general aviation aircraft. Consequently, we must retain a fair compensation system for those who may be injured. On the other hand, pilots have a clear interest in the continued availability of general aviation aircraft at a reasonable cost. As you know, many manufacturers and suppliers have curtailed production and others have abandoned the general aviation business altogether. Product liability concerns are certainly among the contributing factors to the continuing downward trend.

I support a reasonable general aviation statute of repose. Recently, I assured Russ Meyer that I will be happy to testify to that effect before Congress if such testimony might be helpful. I am renewing that pledge to you, and I am also encouraging other trial lawyers to accept the statute of repose concept for this struggling industry. It is a reasonable approach.

I commend you and Congressman Hansen for your efforts. Please feel free to contact me if I can assist.

Sincerely,

F. LEE BAILEY

FLB:alb

Mr. OBERSTAR. I ask unanimous consent that the statement from Governor Gerald Baliles, the Chairman of the President's Commission in the Airline Industry be included in the record at this point.

So ordered.

[Mr. Baliles's prepared statement follows:]

Statement of
The Honorable Gerald L. Baliles
former Chairman, National Airline Commission
on
H.R. 3087
The General Aviation Revitalization Act of 1993
October 27, 1993

The National Commission to Ensure a Strong Competitive Airline Industry made roughly sixty recommendations in all areas of the airline and aircraft manufacturing business. With such a large number of recommendations and such a wide range of issues, it was always notable when the entire Commission enthusiastically embraced a particular idea. Such was the case, however, with our recommendation in favor of "Enactment of a statute of repose for general aviation aircraft which would limit the liability of manufacturers of these aircraft to 15 years from the date of manufacture."

Allow me to say, as Chairman of the Commission, that I believe this recommendation is an important part of the Commission's vision for promoting aircraft manufacturing in this country. Further, the Congress clearly stated, in the Commission's enabling legislation, its desire for the Commission to examine the general aviation manufacturing industry.

The Commission's report notes that more than 100,000 jobs have been lost from this industry over the past decade. Annual piston aircraft sales, which had averaged 13,000 per year from

1965 to 1982, have fallen to 500 per year. With 30 percent of the general aviation aircraft produced in this country historically being sold in export markets, this sharp decline has had a large detrimental affect on our trade balance. Simply put, we are no longer competitive in a key industry in which American technology, American workers and American products once dominated.

One of the factors in this decline, the Commission found, was the effect of the enormous cost of our product liability system which imposes an open-ended exposure on the manufacturers of these airplanes. The Commission determined that product liability costs, in fact, represent one of the largest factors in the price of a new single engine aircraft.

For most products, from automobiles to watches, longevity is a source of pride for the companies and the people who make them. For those who manufacture these aircraft, however, their very longevity and durability has become a source of endless litigation. Planes that have been in use for decades, and been through multiple owners can come back to haunt their original manufacturers.

I do not mean to suggest that product liability is the sole reason for the decline of the small aircraft manufacturing industry. Other governments subsidizing their companies, and access to financing are among the other causes. But the Commission is convinced, as am I personally, that this industry cannot recover without change in this area.

On behalf of the Commission, I congratulate the House Aviation Subcommittee, Chairman Jim Oberstar and Ranking Member Bill Clinger for having this hearing and examining this important issue.

Mr. OBERSTAR. Before we proceed, I would like to insert into the record at this point a statement from Representative Sam Coppersmith of Arizona.

[Mr. Coppersmith's prepared statement follows:]

Statement of the Honorable Sam Coppersmith before the House Aviation Subcommittee hearing on H.R. 3087, General Aviation Revitalization Act of 1993

Mr. Chairman, Subcommittee Members:

I look forward to today's hearing on H.R. 3087, the General Aviation Revitalization Act of 1993, introduced by Representatives Glickman and Hansen. I became an early cosponsor of this legislation, and thank Chairman Oberstar for scheduling this hearing to move this issue forward.

H.R. 3087 cuts off liability for damages of any general aircraft manufacturer for accidents that occur more than 15 years after the aircraft's delivery to its first purchaser. For a component, the bill cuts off liability for the part manufacturer 15 years after the replacement or addition of the part.

This bill is a measured step towards reviving our nation's domestic general aviation manufacturing industry. As prior speakers have noted, new aircraft sales have dropped to record lows year after year. An industry that once employed thousands in high-paying jobs across the country, has shrunk to the point that Cessna Aircraft, once the nation's largest supplier of piston-engine aircraft, has not produced a single airplane since 1986.

Manufacturers of aircraft and parts have found themselves as automatic defendants in civil liability suits arising out of any mishap. The costs of such automatic inclusion in liability suits adds to the costs of manufacturing and purchasing small aircraft. As the cost of new aircraft increased, replacing older aircraft became less feasible for pilots and other aircraft operators, increasing the risk that a plane or component would fail -- not because of a design flaw, but rather due to age. The very longevity of the product could work to the companies' disadvantage.

I think it is clear that the costs of unlimited product liability is not the sole cause of the industry's problems. However, passage of H.R. 3087 will help by placing a reasonable limit on liability for general aviation manufacturing, encourage sales of new airplanes, and serve as a small step toward restoring the industry to its former prominence.

Mr. OBERSTAR. Our next witness is Ed Stimpson, President of the General Aviation Manufacturers Association; Charles Suma, President and CEO of Piper Aircraft Corporation; Theodore Collins, Vice President and General Counsel of Boeing Company, on behalf of Aerospace Industries Association; Russ Meyer, Chairman and CEO of Cessna Aircraft Company; and Fred Sontag, President of Unison Industries Inc.

The Chair will recognize the gentleman from Florida for introduction.

Mr. BACCHUS. Thank you.

I will introduce Mr. Suma of Piper—first of all, I would like to echo Mr. Inhofe, I think that one of the benefits of his resolution is that committees now will be persuaded to consider seriously the legislation that has broad bipartisan support in this House. And I am proud that I was a cosponsor of his resolution and voted for it as well.

Mr. Suma is from Piper which is located in Indian River County in my district along the coast of east central Florida. He is a good man and civic leader and businessman, and I would like to applaud him publicly for all his efforts to employ my constituents. He has brought Piper back from the brink to the point where it is a going concern. With the passage of this legislation, it will be even more of a going concern, even more of a success. And the unemployment rate in Indian River County now is in excess of 15 percent, and this has been a major employer in that county, and it can be again.

Also, I would like to mention another company next door to our county, Collins Avionics is a subsidiary of Rockwell. Collins produces avionics which goes into general aviation aircraft. They employ about 1,000 people in my district, and I am proud of them as well.

On my last visit to Collins, I asked them who their customers were and who they had been in the past. A decade ago, by far, most of their customers were American manufacturing companies. Today, by far, the vast majority of their customers are foreign manufacturers because of what has happened to the American general aviation industry.

This contrast is why it is very important for this legislation to be enacted. I am proud to be a co-sponsor of the bill, and I thank this committee for considering it and for your courtesy as well, Mr. Chairman.

Mr. OBERSTAR. Thank you very much for being with us.

And this morning we will begin with Mr. Stimpson

TESTIMONY OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION; CHARLES M. SUMA, PRESIDENT AND CEO, PIPER AIRCRAFT CORP.; THEODORE J. COLLINS, VICE PRESIDENT AND GENERAL COUNSEL, THE BOEING CO., ON BEHALF OF AEROSPACE INDUSTRIES ASSOCIATION; RUSSELL W. MEYER, JR., CHAIRMAN AND CEO, CESSNA AIRCRAFT CO.; AND FREDERICK B. SONTAG, PRESIDENT, UNISON INDUSTRIES INC.

Mr. STIMPSON. Thank you, Mr. Chairman.

My statement contains many of the statements that have already been made by you and Mr. Clinger and Mr. Glickman and Mr.

Hansen. I would like to summarize by using a few charts to introduce some additional information into the record, and then you will hear from three CEOs in the general aviation business: Russ Meyer, Chairman of Cessna; Chuck Summa of Piper; and Fred Sontag, President of Unison Industries in Jacksonville.

[Charts referred to are attached to Mr. Stimpson's prepared statement.]

This legislation presents a rare opportunity to restore the health of our once proud general aviation industry. A couple of facts have not been brought out this morning. First, we are very proud of our safety record, which has been worked on hard by the government, by the Congress, by industry, and by pilots.

If you look at that chart, you will see that the fatal accidents per 100,000 hours of general aviation had decreased 54 percent since 1960. And this is a continuing trend. Last year was the best year in the history of the industry. And we all will work hard to make that line go even further.

And I might add that this safety record started improving long before we heard about product liability. It was a trend that industry and government have worked on for a long time.

The chart points out that in 1978 industry production has decreased 95 percent. I would like to know another industry that has gone down that much, and you still see the CEOs here alive and well and trying to do better. And I think it speaks well for the "perseverance"—which is the word we have used here this morning—of our industry and, again, how this legislation would help so much in bringing us back.

We will later today be releasing our numbers for the third quarter. They are down 11 percent to the third quarter of this year. So we will be down to probably 500 piston airplanes at the end of this year. And we had 899 total last year. We certainly won't be there this year. It will be even lower. The downward trend very much continues this year.

Jobs. The figure of 100,000 lost jobs was mentioned in the industry. And I just wanted to recoup where that comes from. In aircraft manufacturing, we are down 46 percent. Those people who make piston engines, down 74 percent.

The FBOs, the people who service and sell our airplanes, are down 55 percent from 11,000 to 4,900 FBOs in the last 10 years.

Student pilots. Mr. Glickman talked about student pilots. Student pilot training is down 61 percent. We will have fewer people learning to fly this year than we have ever had, since we kept numbers in the early 1960's.

I was with the Chairman of the Aerospace Department University of North Dakota yesterday. He is ready to buy 200 French airplanes, and these are airplanes that should be bought right here in the United States and not abroad. The piston airplane exports used to be 30 percent of our production, and that is gone. We are not making the airplanes to do that exporting anymore. So the international trade picture has been very much affected by the whole perspective.

Piston engine aircraft. Mr. Glickman mentioned that we used to have 29 companies making piston airplanes in the United States and 9 foreign. And now that is switched. It is reversed. We have

9 companies in the United States and 29 abroad. So this is even a further indication that airplanes are going to be coming this way because we are the best market still for aircraft and aircraft products.

And, finally, on the statute of repose, a 15-year statute of repose has received widespread report from the airline commission, very significantly from every single general aviation consumer group, some of which you will hear from this morning, the National Aviation Associations Coalition, airlines, airline pilots, FBOs, every single group have supported it. It has got the support of the IAM and other local union groups and, as has been mentioned, broad based Congressional support up here, thanks to you and other Members of the subcommittee.

Mr. OBERSTAR. Thank you.

Mr. Meyer, welcome. Glad to have you here again.

Mr. MEYER. Thank you, sir. It is a privilege to be here. And I appreciate the opportunity to testify on a bill which is so important to our industry and to the country.

I think it is important to emphasize that we are not here this morning to talk about tort reform. We are here to talk about the rebirth of an industry which has been essentially destroyed by unlimited cost of product liability applicable to general aviation aircraft.

Most important, we are here today to talk about an opportunity to create thousands of jobs, the kinds of skills, and well-paying jobs that we desperately need in this country, simply by establishing a highly conservative 15-year limitation on the length of time an aircraft manufacturer is held liable for its aircraft.

You have heard, from Dan and from Ed, some of the statistics; but I would like to review quickly some of those statistic as they apply to Cessna and to the industry because we are not dealing with theory; we are dealing with fact.

One, from 1965 to, 1982, a period of 18 years, the general aviation manufacturers in this country sold on average 13,000 piston aircraft a year. As Ed pointed out, in 1993, that number will be less than 500.

Speaking strictly for Cessna, during that same time frame, we sold an average of 6500 piston aircraft every year. At one point, we were making 35 aircraft a day. And solely because of the cost of product liability, we stopped building these aircraft in 1986, and we have not built a single aircraft of that kind in almost eight years.

From an economic standpoint, the job loss has been staggering. More than 100,000 jobs have been lost in one industry. That is just terribly disappointing and unnecessary.

Again, speaking strictly for our company as Cessna, in 1981, we employed 15,000 people. When we exited the single engine business in 1986, we had fewer than 3,000 employees. And all of those were work on our Citation business jet and Caravan utility aircraft.

Ten years ago, Cessna had 10,000 dealers worldwide. Today we have zero.

Throughout the 1962 to 1982 time frame, as we mentioned before, we sold at least 30 percent of our aircraft outside of the country. And our industry back in the early 1980s was about a 3 to $4 billion industry. So we have lost about a billion dollars of product that typically would have been sold outside this country.

Again from 1962 to 1982, U.S. companies produced more than 95 percent of the world's general aviation aircraft. Obviously, that leadership has been destroyed and the economic benefits lost.

When we were actively producing piston aircraft at Cessna we provided job opportunities to young people, not just in manufacturing but also in engineering and marketing and product support and flight training and a wide range of technical services.

We also provided hundreds of aircraft each year to dozens of colleges and universities with aviation departments.

Ed just commented on the loss of those aircraft at the University of North Dakota. Today we provide zero. Even though we have not produced a single engine aircraft for more than seven years, we continue to be sued in almost every accident involving one of our aircraft, regardless of cause.

In more than 50 percent of those cases, during the past five years, the aircraft were more than 15 years old. There is an interesting and very unfortunate comparison of our investment.

From 1965 to 1982, in every one of those years we invested, at Cessna, an average of 20 to $25 million every year in research and development. And that investment created new and improved aircraft and obviously created a lot of jobs. Since 1986, we have stopped this investment in piston aircraft.

But, coincidentally, we have spent 20 to $25 million in each one of the last seven years to defend hundreds of product liability cases. I hasten to point out that only a very, very small percentage of that $150 million was ever paid to the claimants.

During its first 15 years, on average—and this addresses your point, Mr. Chairman—general aviation aircraft accumulated about 6,000 flight hours, has at least three engine overhauls and several owners which, in our view, is clear evidence of the integrity of the aircraft.

With that information as background, I would like to direct my comments briefly to the benefits to both the industry and the country of this 15-year statute of repose.

First, as Congressman Glickman indicated, we are committed at Cessna to restart piston aircraft production as quickly as possible after enactment of a statute of repose. As a result, literally hundreds of suppliers of engines, avionics propeller, and instrumentation manufacturers would increase their employment.

Within five years, more than 25,000 jobs would be created at absolutely no cost to the government. These would be well-paying jobs in every sector of the industry and all areas of the country and would include not only all phases of production but also engineering, marketing, and customer support.

We would create a whole range of vocational opportunities for young people interested in a career in aviation.

Manufacturers in this country would regain their worldwide leadership in this important industry, and new aircraft sales would contribute positively to our balance of trade.

Students pilot starts would increase significantly, providing a necessary pool of pilots for the airlines and other commercial operations.

I would like to comment briefly, as others have, on the support of this bill by other organizations. We indicated every aviation consumer organization is in support. We were very, very pleased that the International Association of Machinists has been very, very strongly supportive.

I am sorry that John Peter Paul was not able to testify this morning. He is in Europe. He has written a very strong statement, and he has commented publicly on this bill; and I am sure you will have an opportunity to have that in your file.

I had the privilege of serving with John and Governor Baliles and the other as a member of the airline commission which just submitted its report. Governor Baliles is also out of town, but he sent you a two- or three-page letter.

I think the most interesting of which is the introduction in which he says that, "Our commission, in hearing dozens and dozens of witnesses and studying about 60 or 70 issues related to the airline and aircraft manufacturing industries, this was perhaps the only one of all of those issues which was unanimously endorsed by the entire 15-member commission."

We were very pleased with that. This legislation, in our view, is a win-win-win situation. It will bring an important industry back to life. It will create thousands of jobs. It will create a whole range of excellent career opportunities. And it will have an immediately positive impact on the economic health of our great country.

I have devoted most of my working career to aviation. I have watched with sadness and frustration the destruction of an industry because of a product liability environment that defies reasonability. Claims just go on and on despite the fact that the operational safety record, as we have pointed out, has achieved new records almost every year for the past 25 years.

This is a simple piece of legislation which eliminates financial exposure after the product has proven its integrity. But while it is a simple, straightforward bill, the positive results will be immediate and will increase over time.

I appreciate this opportunity to speak in support of the General Aviation Revitalization Act of 1993. It is a well-named piece of legislation. And it is truly a meaningful and critical piece of legislation which will have enormous and very favorable long-term benefits, not just to the industry but to the entire country.

Thank you very much, sir.

Mr. OBERSTAR. Thank you, Mr. Meyer. I appreciate your statement.

Mr. OBERSTAR. Mr. Suma.

Mr. SUMA. Thank you, Mr. Chairman and committee Members.

It is, indeed, an honor to come before the House Public Works and Transportation Subcommittee on Aviation to testify on the General Aviation Revitalization Act of 1993.

While preparing for this testimony, I was reminded of a speech I heard as a child given by then-President John F. Kennedy in which he made this notable quote: "Ask not what your country can do for you but what you can do for your country." A variation of this quote is germane to today's testimony: "Ask not what Congress can do for general aviation manufacturers but what can general aviation manufacturers can do for the country."

To understand what general aviation can do for the country, one must comprehend what has occurred in the industry over the past 23 years.

During this period, 1970 through 1979, American-based general aviation manufacturers produced in excess of 128,000 piston engine aircraft. Compare this to the meager 2,050 piston engine aircraft produced from 1990 through mid-1993, reduction from approximately 13,000 units per year to approximately 500 units per year.

The number of American-based piston aircraft manufacturers has declined from 29 in 1980 to 9 today.

Factors which contributed to the decline in the aircraft market during the 1980's were: ever-increasing inflation, rising interest rates, and spiraling fuel prices, all of which had a direct affect in increasing acquisition and operating costs.

However, the primary and most devastating reason for the severe decline in piston engine production and the fostering of offshore manufacturing companies was the dramatic rise in product liability costs. Expenses incurred in defending frivolous product liability lawsuits triggered escalating premiums for liability insurance for the large fleets of existing aircraft purchased as far back as the early 1930s.

Piper alone manufactured in excess of 135,000 aircraft by 1980, with an active fleet of 65,000 domestically and 30,000 internationally. This product liability tail, as we call it, is the primary cause of high product liability costs. American manufacturers are, in effect, being punished for their past success.

Plagued with ever-increasing premiums and larger deductibles, manufacturers were forced to reallocate more funds to these costs and less to research and development.

Piper's premiums soared to record highs in the mid-1980s with the last insured year's premiums in excess of $25 million, with a $15 million deductible or over $40 million per annum of product liability cost, against $100 million in sales.

The dramatic effect on the consumer was twofold. First, the cost of general aviation products has increased significantly. Second, due to less research and development funding, only minor product refinements have been offered in the marketplace in the past decade.

The last new product design introduced by Piper was the Malibu in 1983. This is still one of our most popular models today and the last new product design from OEM, manufacturers of piston aircraft.

An innovation in piston engine design, the Malibu was intended to be the basis of a new product line for Piper ushering in a new generation of products for the consumer which introduced new technologies to enhance safety, pilot proficiency, and passenger comfort.

I mention this not as an advertisement for the Malibu but to emphasize the importance of new product innovations to maintain a strong, competitive industry. The only competition for the Malibu series has appeared in the form of a look-a-like turboprop, the TBM700, designed and manufactured by a company funded by the French Government, known as Aerospatiale. Although not a direct competitor, the TBM–700 offers the Malibu owner an option of increased performance and size.

It is sad to me that, due to the lack of R&D funding in the American-based industry, this product came from a foreign company. On the horizon are other foreign competitors from European and Pacific Rim countries who are actively working on new aircraft designs. They do not carry the burden of product liability costs for half a century or more of product manufacturing and will be able to capitalize as they introduce these new products in the United States in the future.

To summarize the effects of product liability on our industry, one could say that it has robbed us of our ability to be competitive through new product innovations.

However, during these difficult times, American manufacturers have never turned and run from their duty to provide technical support and parts for the existing fleet of products. If we had, we would have jeopardized the safety of the flying public, and that is a responsibility we have always taken very seriously.

The effect of product liability was felt by everyone involved in aviation. However, no one has suffered more than Piper Aircraft Corporation. Although product liability was not the only reason Piper landed in bankruptcy in July of 1991, the uninsured posture of the company was forced to take due to the cost of insurance made the company unfundable through traditional financing sources.

When the company filed for bankruptcy, it had only 45 employees less than $1,000 in the bank, and all production lines were idle.

Two years later, while operating under Chapter 11 protection, the company has reorganized itself, now employing 360 hard-working individuals. We completed fiscal 1993 with 113 units delivered to produce revenues in excess of $48 million and profits in excess of $6 million, fully burdened with bankruptcy costs.

Bankruptcy is another issue for another committee some other time.

Although these numbers pale in comparison to the 1970s and 1980s in volume of units and revenue, you have to ask the question: What caused this remarkable turn around?

The answers are a lot of hard work combined with protection from the costs and distraction of product liability.

Also, during this time, Piper has introduced two new model derivatives with resounding success in the retail marketplace. Although these programs were not the intensive product innovations, they proved that the consumer needs and desires new products.

The primary hurdle to Piper's emergence from the bankruptcy is finding a solution to the problems generated by the company's product liability tail. It is no secret to anyone involved in Piper's bankruptcy case, including the judge, that passage of this legislation would increase the value of Piper and its assets and thus increase our ability to pay our unsecured creditors.

Now let us focus on what our industry could do for the country, given the opportunity available in the General Aviation Revitalization Act of 1993. General aviation can create new jobs with no cost to the government or the taxpayer through passage of H.R. 3087. New jobs, in excess of 25,000 manufacturing blue and white collar middle income level positions, could easily be created within five years of the passage.

Typically these manufacturing-based jobs have an economic factor of one to four, creating residual jobs in support industry or product usage such as airports, fixed base operators, and maintenance facilities.

I believe that the bill's passage will cause insurance companies to eventually feel comfortable with insuring fleets under 15 years old. And when this happens, rates will come down, and we will be able to spend the money on research and development.

None of the manufacturers are trying to cut and run from their responsibility to the existing fleet, but we are looking toward continuing to create a level playing field so that everyone may benefit from the jobs that are created from this small piece of legislation.

Thank you.

Mr. OBERSTAR. Thank you, very much, Mr. Suma. A very solid statement. And we welcome your presentation this morning.

Mr. Sontag.

Mr. SONTAG. Thank you, Mr. Chairman. I am Rick Sontag, President of Unison Industries.

If you don't mind, Mr. Chairman, I would like to depart from my written comments.

Mr. OBERSTAR. Your statement will appear in the record in full.

Mr. SONTAG. Thank you.

My company makes components that go on airplanes that are manufactured by Cessna and Piper and other aiframe manufacturers.

Our components are primarily magneto ignitions which keep the engines running on these planes. So, we are square in the middle of this product liability crisis.

As a component manufacturer, I would say that there are hundreds, if not thousands, of people like us, as component suppliers, for every one of these airframe manufacturers. So what I am about ready to tell you applies across the board to many companies similar to mine.

My company has been dramatically affected by product liability.

Just a few comments. Back in 1979, we used to make about 35,000 magneto ignitions for these small airplanes. Last year we made barely a thousand of these ignitions that go on new airplanes. Because of that, we have, today, less than 50 percent of the people manufacturing these magneto ignitions as we did back in 1979.

In addition to these magneto ignitions, we happen to make products that go on larger airplanes including some of Boeing Aircraft's 747s and other large commercial airliners. We carry product liability insurance for all of these products that we manufacture.

However, we have never once had a product liability claim for products sold to the other aviation markets, other than general aviation. Never once have we ever had a claim. In fact, our product liability insurance premium is solely dedicated to general aviation.

Because of our general aviation exposure, we pay roughly eight times the level of premium per dollar of sales for general aviation aircraft as we do for all other forms of aviation. And so the effect on my company has been absolutely devastating. Product liability has killed a number of general aviation vendors like our company. It has taken jobs away from the community. It has taken people's incomes away from them, and I would say this goes across the board for all component suppliers to this industry.

It is important to understand that my perspective is a little bit different from the rest of the people at this table. I am an entrepreneur. And as an entrepreneur, I invest my own time, my own money, and my own effort in my business. And if I do my job right, my company is successful and it produces jobs which, in turn, means that people get incomes and contribute to the economy of the United States.

I don't have a problem competing against foreign competition. I don't have a problem competing with technical innovation. I don't have a problem competing with people problems and controlling all the aspects of business that I have to deal with as an entrepreneur and owner of my own business.

But I sure can't compete in this industry when I have the deck stacked against me with a set of product liability laws that make it impossible to compete. And that is the problem that I see today.

Here I am, an entrepreneur, like a number of other people who are suppliers in this industry, who are fighting with one hand tied behind our back. I think it is a sad commentary that I am sitting here before this committee and I have to say that six years ago I sat here before this same committee—in fact, you, Congressman Oberstar were sitting in that same hearing—where I repeated the same comments, gave the same information, told the same stories, gave the same anecdotes, as I am giving here today.

It is sad that we sit here six years later and virtually nothing has changed. Nothing, that is, except one thing: The industry, instead of being in bad shape, has been totally decimated. It has gotten worse in the last six years as a result of our inability to get action in the area of product liability. Everything else is virtually the same.

In fact, six years ago, we mentioned that every major group associated with this industry, the manufacturers, the customers, all vendors, and even labor support this legislation. There is only one group that doesn't—one major group that doesn't. And it is the same today as it was six years ago. And that is the Association of Trial Lawyers of America.

I understand that they will have a witness, or at least an attorney, speaking presumably on their behalf later in this testimony. I would suggest that you listen carefully to him. He is an advocate. It is his job to sound good, and I am sure that he will present a good case.

But consider a couple of things: First, the ATLA is just a small faction within the American Bar Association, and the ATLA doesn't necessarily speak for the American Bar Association.

A few weeks ago, I was privileged to be able to speak at a symposium on product liability given by the National Academy of Engineering. At that symposium, the President of the American Bar Association also spoke. Subsequent to his talk, we asked him about the ABA's position relative to change in the product liability system. The President of the ABA said that the ABA will take no position on product liability reform.

He further said that the ABA would be willing to support whatever is the will of the people as it is worked out between the opposing groups, because the ABA's primary concern is in getting cases expeditiously resolved.

The second thing that you ought to be considering when he gives his testimony is if he doesn't agree with this statute of repose legislation, what does he suggest? Does he suggest a longer period? Should it be 20 years? Should it be 25 years? Should it be 50 years? Just when does he think that the manufacturer ought to be off the hook for his original design and his original manufacture of a product?

He may say never. And if he says never, I might suggest that you ask him if he would consider the same kind of consideration for a malpractice statute of limitations in his own industry. Clearly, there has to be a time after a manufacturer has made a product where the product has proven itself. Where through, its own use, its ability to do what it was originally intended to do, the product ought to be off the hook for product liability due to original design and manufacture.

The ATLA is the only major group with a personal financial interest in perpetuating the system as it presently exists.

This is a simple piece of legislation, much more easy to understand than the last time that we stood before your committee. And the last time we stood before your committee, you passed out the more complicated piece of legislation.

I ask that you give us the same fair consideration on this bill. And I hope that you do pass this legislation out of committee so that it has consideration by the full House of Representatives.

And if you do, I would encourage you to ask your brethren in the Judiciary Committee, who have been reluctant to hold a hearing for the last several sessions of Congress, to please consider this legislation, give it its fair day and a fair hearing that we expect for this industry. We think that this is important for the United States.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you Mr. Sontag. It does, indeed, bring back memories of your earlier testimony and your persistent efforts. We appreciate it.

Mr. Collins.

Mr. THEODORE COLLINS. Thank you, Mr. Chairman. I am Ted Collins, Vice President and General Counsel of the Boeing Company. And I am here on behalf of AIA.

You might ask: What interest does the AIA have in this? It is usually identified with the large commercial transports. But our members are also the engine and component manufacturers that support the general aviation. And so this impacts our industry as well.

I think the case has been very well made here today for the statute of repose. This industry obviously needs help. The long tail of liability is overwhelming its current business base, to a point, where the industry can't support both. And there has to be some resolution of it.

I think this statute of repose of 15 years—it has been through several versions and now it is before you at 15 years—is a measured response which balances the interest of the industry as well as the interest of the claimants. So I think that this legislation is timely, and I think it has obviously broad support.

And I just wanted to say as my first point, AIA strongly endorses this legislation.

The second point is, on a different subject, but related, I want to alert you—the question came up as to who regulates this industry? Is it done at the Federal level or does each State have a hodgepodge of State regulations? There is a recent decision involving Piper Aircraft from the Tenth Circuit making the following statement: "By designating the design standards as minimum, Congress"—that is you—"indicated that it did not want to bar States from adopting additional or more stringent standards."

So this raises, in my belief, the question of who regulates the design of aircraft? And we submit that this legislation—we need legislation to clarify that the Federal standards are uniform and applied throughout the States.

This case arose, as many cases do, in unusual circumstances. It was a Piper Cub, and the pilot was piloting the Piper Cub from the rear seat because he had a camera mounted in the front seat. And the operator of the airpark didn't like this, so he had a van parked in the runway and the plane, as it was trying to take off, couldn't see it and collided with the van and injured the pilot badly. They sued the Piper company on the basis of negligent design, the tail dragging design of the aircraft.

The theory of the plaintiff was that it should be a nose wheel rather than a tail dragger design. Now this was certificated by the FAA in 1949, this design. There are 45,000 aircraft currently being flown with this design; but when it comes to the State of New Mexico, that jury was permitted to say that is an improper design and the Tenth Circuit approved this, despite the fact that the Department of Transportation filed the an amicus brief saying that there should be uniformity of regulation. Several other industry groups, AIA and GAMA and the Aircraft Owners and Pilots Association, said that there should be uniform aircraft design. But the Tenth Circuit didn't agree.

But, however, the main subject before the House is the statute of repose. I just wanted to alert you of this other issue that is lurking in the background.

But we support this statute of repose. It is long over due.

Mr. OBERSTAR. You cited one of those cases with which the record is replete of bizarre incidents that resulted, nonetheless a trial judge award against the manufacturer. And we need not go into the specifics of that case.

I just have a couple of questions. Why are foreign manufacturers taking such a big bite out of the markets? Why aren't they being hurt by the product liability statutes as they exist today?

Mr. SUMA. The reasoning on that is that the foreign manufacturers don't have the tail of aircraft for the past 30, 40, 50 years of manufacturer to deal with. They are entering into a market with no tail; and in many cases, they don't bear the burden of that product liability because they are a foreign-based manufacturer.

Mr. MEYER. I would like to add that we have not only the cost of carrying the liability for the airplanes, which we built over the last 40 or 50 years, but if we were to build an airplane without this legislation, we would be unable to quantify the cost of product liability. And that is why we are not building aircraft, because it still may be 30 or 40 or 50 years and may be two or three times the price of that product.

Mr. OBERSTAR. The time frame hasn't caught up with the foreign manufacturers. They haven't had aircraft up and operational for as long as U.S. manufacturers.

Mr. MEYER. That is correct. And it is harder to sue a foreign manufacturer than it is a domestic one.

Mr. OBERSTAR. One of our subsequent witnesses—and I might add that the American Trial Lawyers Association was invited specifically to participate at the hearing and chose not to. But the question that our witness, Mr. Katzman raises is that the proposed legislation would be unfair in the case where a manufacturer either knows of a defect in its product before the 15-year period expires or conceals evidence of a defect in the product before the time expires.

Mr. MEYER. That is kind of a typical unsubstantiated comment of a trial lawyer to imply that a manufacturer who lives as we should in a highly regulatory environment. We go through a three- to five-year process of structural fatigue, aerodynamic testing to get a type certificate with the FAA.

After the airplane is certified, each airplane has to be specifically certified with a production and airworthiness certificate.

To maintain that certificate, we have mandatory inspection requirements. We have annual airworthiness requirements.

And to suggest that a manufacturer would or could try to hide some defect in an airplane over a 15-year period is without any substantiation and is impossible.

Mr. OBERSTAR. Going back to the situation, the case that Mr. Collins cited, our staff reviewed that item; and the finding of the court was that it was not impossible for the company to meet common law standards, that the manufacturer, in this case Piper, could have improved visibility simply by raising the pilot's seat.

This is the point that our subsequent witness is making, that here is something that was overlooked. Without debating the merits of that case—and there is a great deal that we don't know about it—the allegation is that the safety of the aircraft could have been improved by raising the pilot's seat to improve visibility.

Is that the kind of thing that is going to be protected from a 15-year statute of repose?

Mr. SONTAG. Well, Congressman, I think there is a big difference between the allegation that a manufacturer knowledgeably conceals information of a defect and what you are suggesting where there may be a design alternative at the time that somebody designs an airplane.

Mr. OBERSTAR. That is what the court said.

Mr. SONTAG. Those are two different cases. The original thing you were talking about is somebody concealing a defect. I would say that there are other remedies for that.

If somebody has something that can contribute to damage and conceals it, there are other legal remedies. But the case where you talking about where a guy has design an alternative available to him at the time of design. Surely if he makes the decision to make the seat one height or another height, he has made the decision that that is the way the thing ought to be built.

And litigation that happens subsequent—if it is not going to be adequate, you would think it would happen within 15 years. Isn't 15 years enough time to determine whether or not a seat height was not sufficiently high enough to cause an accident? Should it be 10 years? In some States the statute of repose is 10 years. Should it be 50 years? People will probably have grown four or more inches in 50 years.

Clearly there has to be a time that these design elements that we are talking about have proven themselves. There has to be a time. When does a design become effective? When has it proven its case? You buy food, and you eat it, it is gone, and it's design and manufacture is proven pretty quick. You buy an airplane, it could be around for 50 years. If it is still flying after 50 years and hasn't had an accident, do you think it has proven itself? Or how much more time does it need?

Mr. OBERSTAR. The question is how many other cases arose because of visibility and seat height? And this one case does not prove the manufacturer defect.

Mr. SUMA. This is the only one that I am aware of that has happened. I think what you have to focus on is that there is always the ability to come in as a Monday morning quarterback and say that you could design something differently or better.

The bottom line is that we have certified these products to stringent Federal regulation. We have done substantial structural and flight tests on the items. And we have met all the criteria that the FAA has laid out for the safety and integrity of the product.

We respond to questions of the FAA and the flying public. And we continue to service these character aircraft. This is a typical case of trying to find something wrong with the aircraft to generate a frivolous lawsuit.

Mr. THEODORE COLLINS. I couldn't agree with that statement more. That particular observation about raising the seats, it was made in the course of a deposition of an expert. And the expert said, I have never measured it, and I don't know if it would work or not, but it might. Of course it might. You are all second guessing. That is the vice, when you permit people to second guess an FAA certification and that finds its way into a Tenth Circuit decision. That is not enough.

Mr. OBERSTAR. But that is what the judge used to make the decision in the case.

Mr. THEODORE COLLINS. Sure did.

Mr. STIMPSON. One other thing, Mr. Oberstar. We operate under stringent FAA regulations; and if we find something wrong with the airplane, whether it is 1 or 2 years or 50 years, we have to report it to the FAA and let our customers know.

In this statute of repose, this bill does nothing to change that regulatory structure whatsoever as you appreciate.

Mr. OBERSTAR. Thank you.

Mr. Clinger.

Mr. CLINGER. Just on the case that we have been discussing, it seems that if you don't preempt the States in this area, then you are subjecting manufacturers to different standards of care depending on where the alleged defect occurred. You could be held liable in one circumstance and not in another, depending on where you are. That seems to me that causes you extreme angst being the subject of 50 different standards of what might constitute negligence.

And yet the Federal Aviation Act specifically exempted or preempted States with regard to rate, routes, and services. Did they exclude—do you think they intended to exclude safety, or should we assume from that that they wanted to permit the States to act in that area separately?

Mr. THEODORE COLLINS. I think, you know, the legislative history of the Federal Aviation Act is loaded with indications that there was intended to be a uniform standard of safety and a uniform standard of design.

And, therefore, when you see a decision like this which says, in a sense, just the opposite, it doesn't make sense. And apparently they feel there were ambiguities in the standards. But that ambiguity needs to be clarified because the point you are raising is one that we agree with completely. You cannot have 50 different standards for aircraft design. There should be one.

Mr. CLINGER. I think you mentioned that in 1980 there were 29 general aviation manufacturers and there are now 9.

What were the figures? How many planes were we manufacturing in 1980?

Mr. SUMA. We did approximately 128,000 in that period of time. It was a 10-year period. It averaged out to about 13,000 units a year.

Mr. CLINGER. And now this year?

Mr. SUMA. It will be under 500.

Mr. CLINGER. It is an absolute devastating problem.

Mr. SUMA. The industry is devastated by the product liability.

Mr. CLINGER. Some will say that product liability is not the sole or even the principal problem of this industry. Like the airlines, you overproduced and the airlines are flying with too much growth and that there were other factors, the luxury tax, the cost of fuel, that affected this.

Mr. SUMA. There were other factors, but this was the major and the biggest problem that we face. I challenge any of those people to come walk in my shoes the last two years going through bankruptcy with the company and facing the product liability issues like we have. I challenge the people to come take a look at the company and what it has done to us.

Mr. MEYER. It is the sole reason that we stopped building piston aircraft. We had 65 percent of the world's market at Cessna in 1981. It is the sole reason we got out of the business.

And if this legislation is passed, we will go back to business. If it is not passed, we won't.

Mr. CLINGER. That is pretty persuasive.

Mr. MEYER. I don't know who was saying why we did or why we won't; but as manufacturers, I can tell you that I was chairman during that entire period of time and those are the facts.

Mr. CLINGER. It seems to me that another sort of result of this is that aircraft are kept in service much longer than they otherwise might be.

And given the fact that you are no longer producing as many and there still is the demand, isn't it a safety factor involved there, that perhaps aircraft that might better be retired at some stage of the game are continuing to be in service because there is a lack of supply?

Mr. MEYER. I think that we don't have any problem with an aircraft that is maintained properly and flown properly. It may be 30 or 40 or 50 years old.

Mr. CLINGER. You don't encourage metal fatigue or any of those problems?

Mr. MEYER. No, sir.

Mr. CLINGER. Is there anything magic about 15 years? Is there some rationale for that?

You mentioned, Mr. Sontag, it could be 20 or 10 or could be 50. Is there any reason particularly for picking the 15?

Mr. MEYER. One of the examples that we gave is—I think there is a lot of good reasons for it to be shorter. The longer it is, the less help it is because it does not decrease the cost over that period of time.

But as I said, in 15 years, when you consider that an average airplane has 6,000 flight hours, two or three overhauls, at least three or four owners during that period—and that is on average—many aircraft are flown 15,000 hours during that period of time, and that seems to us to be a very strong case of the aircraft was built and designed properly and has done what it was intended to do, which was fly safely during that period of time.

Mr. SONTAG. Fifteen years does not actually bar the lawsuits. Sometimes people misconceive what this legislation is about. This is a rolling statute of repose which says that if you renew a part on an airplane, put new wheels on it, put new avionics in it, new magneto ignition on it, the day that those are manufactured, it starts a brand-new statute of repose for that component.

As a result, an airplane which is 16 or 17 years old can still have litigation brought against it for product liability if the component that caused the damage is less than 15 years old.

And I will tell you part of the reason for the 15 years. There are some States that have a 10 year statute of repose already in existence. We had legislation in the House which was introduced back in 1986 which was 12 years and passed out of this committee. And on the Senate side, there was legislation that was 20 years.

Mr. CLINGER. Okay. Thank you gentlemen.

Mr. Chairman, I have some very technical questions that I would like to submit for the record.

Mr. OBERSTAR. Without objection the questions will be submitted to the witnesses, and responses submitted will be included in the record at this point.

[The questions and responses follow:]

General Aviation
Manufacturers Association

Suite 801
1400 K Street, N W
Washington, D C 20005-2485
(202) 393-1500

December 21, 1993

Honorable William F. Clinger, Jr.
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Clinger:

Thank you for your interest and support of H.R. 3087 which will revitalize the general aviation industry. We are pleased to answer the following questions you posed at the October 27, 1993 hearing.

1. If a manufacturer warranted an aircraft or component part to last more than 15 years, would a lawsuit against that manufacturer be barred by the 15-year statute of repose?

Answer to Question 1: The proposed statute of repose would not abrogate manufacturer's warranties which extend beyond fifteen years. A manufacturer subject to such a warranty would have a legal obligation to meet the terms of that warranty, but would not be liable, even under the warranty, for damages resulting from an accident. Warranties are not written to cover accidents.

2. If a manufacturer knew of a defect in the aircraft or part but failed to warn the users of that defect, could the manufacturer be sued for that failure even though the aircraft was older than 15 years? What about if the manufacturer should have known of the defect or had constructive knowledge of the defect?

Answer to Question 2: See answer to Question 3 below.

3. If the manufacturer knew of a defect in an aircraft or part that was older than 15 years but purposely concealed that defect, would a lawsuit still be effectively barred by this statute of repose? Would this be affected by an FAA enforcement action?

The proposed statute of repose would apply without regard to whether the manufacturer knew or should have known of the alleged defect.

Although the proposed statute of repose would completely bar lawsuits against general aviation manufacturers for damages arising from accidents occurring more than 15 years after delivery of the allegedly defective aircraft or installation of the allegedly defective part, that statute would have little, if any, effect on the quality of aircraft engineering, manufacturing, maintenance, or monitoring. Aircraft manufacturers operate in an environment controlled by legal and market-based sanctions which, GAMA believes, make it extremely unlikely that the illicit activities contemplated by questions 2 and 3 would ever occur.

For example, a manufacturer must report product defects to the FAA regardless of when it discovers those defects. Fed. Aviation Reg. Part 21.3(a) (attached). If a manufacturer breaches its duty to report defects, then the FAA may take criminal action against the manufacturer. The Federal Aviation Act provides:

> It shall be unlawful for any person... to obtain any certificate authorized to be issued under this chapter by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making any false writing or document to contain any false, fictitious, or fraudulent statement or entry...

Deliberately or recklessly hiding knowledge of defects can subject a manufacturer to criminal penalties. The whole issue of fraud (and its criminal law consequences) is not changed by this legislation.

In addition, the FAA may pursue civil action which could result in revocation of certificates, fines, recalls, or other penalties. Further, within the small, close universe of general aviation manufacturers and users, concealment of a product defect would have catastrophic effects on that manufacturer's ability to continue to sell and maintain aircraft.

Maintenance personnel, who are certified and inspected by the FAA and are totally independent of the manufacturer, are required by law (Fed. Aviation Reg. 145.63, attached), to report aircraft defects through an FAA-administered system. The FAA provides those reports to the manufacturer. In addition, user groups, such as the Cessna Pilot Association, have developed extensive information networks to share information on the operation and maintenance of specific models. Those user groups, combined with a vigilant aviation press, compel the manufacturer to continue to provide the highest level of engineering and design services.

4. If an accident involving an aircraft or part older than 15-years should occur before this legislation is enacted but the lawsuit is not filed until after its enactment, would the plaintiff be defeated by this statute of repose?

Answer to Question 4: If the aircraft or component is more than 15-years old at the time of occurrence, and the suit is filed after the enactment of the statute of repose, the suit would be dismissed.

5. If the injury occurs before the end of the 15-year period but the lawsuit is filed after the end of the 15-year period, would the injured party still be able to recover damages from the manufacturer or would the suit be barred by the statute of repose?

Answer to Question 5: The injured party would still be able to recover damages from the manufacturer. The statute of repose provides only that the accident which causes the damage must occur within the fifteen-year period. Of course, the injured party must bring the action within the statute of limitations applied by the state.

Thank you for this opportunity to answer these important questions. We would be happy to respond to others as well. We look forward to mark-up of H.R. 3087 in early 1994.

Sincerely,

Edward W. Stimpson
President

cc: Honorable James Oberstar
Chairman, Aviation Subcommittee

bution must be adequate to extinguish fires. An individual "one shot" system may be used.

(3) The fire-extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

12. *Fire extinguishing agents.* Comply with § 25.1197 of this chapter in effect on September 26, 1978.

13. *Extinguishing agent containers.* Comply with § 25.1199 of this chapter in effect on September 26, 1978.

14. *Fire extinguishing system materials.* Comply with § 25.1201 of this chapter in effect on September 26, 1978.

15. *Expiration.* This Special Federal Aviation Regulation terminates on September 13, 1983, unless sooner rescinded or superseded.

[Doc. No. 18315, 44 FR 53729, Sept. 17, 1979; 45 FR 25047, Apr. 14, 1980; 45 FR 80973, Dec. 8, 1980, as amended by Doc. No. 21716, 47 FR 35153, Aug. 12, 1982]

Subpart A—General

§ 21.1 Applicability.

(a) This part prescribes—

(1) Procedural requirements for the issue of type certificates and changes to those certificates; the issue of production certificates; the issue of airworthiness certificates; and the issue of export airworthiness approvals.

(2) Rules governing the holders of any certificate specified in paragraph (a)(1) of this section; and

(3) Procedural requirements for the approval of certain materials, parts, processes, and appliances.

(b) For the purposes of this part, the word "product" means an aircraft, aircraft engine, or propeller. In addition, for the purposes of Subpart L only, it includes components and parts of aircraft, of aircraft engines, and of propellers; also parts, materials, and appliances, approved under the Technical Standard Order system.

[Doc. No. 5085, 29 FR 14563, Oct. 24, 1964, as amended by Amdt. 21-2, 30 FR 8465, July 2, 1965; Amdt. 21-6, 30 FR 11379, Sept. 8, 1965]

§ 21.3 Reporting of failures, malfunctions, and defects.

(a) Except as provided in paragraph (d) of this section, the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or the licensee of a Type Certificate shall report any failure, malfunction, or defect in any product, part, process, or article manufactured by it that it determines has resulted in any of the occurrences listed in paragraph (c) of this section.

(b) The holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or the licensee of a Type of Certificate shall report any defect in any product, part, or article manufactured by it that has left its quality control system and that it determines could result in any of the occurrences listed in paragraph (c) of this section.

(c) The following occurrences must be reported as provided in paragraphs (a) and (b) of this section:

(1) Fires caused by a system or equipment failure, malfunction, or defect.

(2) An engine exhaust system failure, malfunction, or defect which causes damage to the engine, adjacent aircraft structure, equipment, or components.

(3) The accumulation or circulation of toxic or noxious gases in the crew compartment or passenger cabin.

(4) A malfunction, failure, or defect of a propeller control system.

(5) A propeller or rotorcraft hub or blade structural failure.

(6) Flammable fluid leakage in areas where an ignition source normally exists.

(7) A brake system failure caused by structural or material failure during operation.

(8) A significant aircraft primary structural defect or failure caused by any autogenous condition (fatigue, understrength, corrosion, etc.).

(9) Any abnormal vibration or buffeting caused by a structural or system malfunction, defect, or failure.

(10) An engine failure.

(11) Any structural or flight control system malfunction, defect, or failure which causes an interference with normal control of the aircraft for which derogates the flying qualities.

(12) A complete loss of more than one electrical power generating system

[Doc. No. 1157, 27 FR 6662, July 13, 1962, as amended by Amdt. 145-16, 43 FR 22643, May 25, 1978]

§ 145.61 Performance records and reports.

Each certificated domestic repair station shall maintain adequate records of all work that it does, naming the certificated mechanic or repairman who performed or supervised the work, and the inspector of that work. The station shall keep each record for at least two years after the work it applies to is done.

§ 145.63 Reports of defects or unairworthy conditions.

(a) Each certificated domestic repair station shall report to the Administrator within 72 hours after it discovers any serious defect in, or other recurring unairworthy condition of, an aircraft, powerplant, or propeller, or any component of any of them. The report shall be made on a form and in a manner prescribed by the Administrator, describing the defect or malfunction completely without withholding any pertinent information.

(b) In any case where the filing of a report under paragraph (a) of this section might prejudice the repair station, it shall refer the matter to the Administrator for a determination as to whether it must be reported. If the defect or malfunction could result in an imminent hazard to flight, the repair station shall use the most expeditious method it can to inform the Administrator.

(c) The holder of a domestic repair station certificate that is also the holder of a part 121, 127, or 135 certificate, a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or that is the licensee of a Type Certificate, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it, under § 21.3, § 37.17, § 121.703, § 127.313, or § 135.57 of this chapter.

[Doc. No. 1157, 27 FR 6662, July 13, 1962, as amended by Amdt. 145-9, 35 FR 3155, Feb. 19, 1970; Amdt. 145-13, 35 FR 18189, Nov. 28, 1970]

Subpart C—Foreign Repair Stations

§ 145.71 General requirements.

A repair station certificate with appropriate ratings may be issued for foreign repair station if the Adminis trator determines that it will be neces sary for maintaining or alterin United States registered aircraft an aircraft engines, propellers, appl ances, and component parts thereo for use on United States registered ai craft. A foreign repair station mus meet the requirements for a domesti repair station certificate, except thos in §§ 145.39 through 145.43.

[Doc. No. 25454, 53 FR 47376, Nov. 22, 1988

§ 145.73 Scope of work authorized.

(a) A certificated foreign repair station may, with respect to Unite States registered aircraft, maintain o alter aircraft, airframes, powerplants propellers, or component parts thereof. The Administrator may prescrib operations specifications containin limitations that the Administrator determines necessary to comply with th airworthiness requirements of thi chapter.

(b) A certificated foreign repair station may perform only the specifi services and functions within the ratings and classes that are stated in it operations specifications.

[Doc. No. 25454, 53 FR 47376, Nov. 22, 1988

§ 145.75 Personnel.

(a) Each applicant for a foreig repair station certificate and rating, o for an additional rating, must provid enough personnel who are able to perform, supervise, and inspect the wor for which he seeks a rating, wit regard being given to its volume o work.

(b) The supervisors and inspectors o each certificated foreign repair statio must understand the regulations i this chapter, FAA airworthiness directives, and the maintenance and servic instructions of the manufacturers o the articles to be worked on. However they do not need airman certificate issued under this chapter and, alon with the persons performing the wor of the station, are not considered to b

Mr. OBERSTAR. The gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

If I could go back to the Chairman's question about the subsequent testimony we are going to receive from Mr. Katzman, and the question was answered by Mr. Meyer. I don't think it was fully answered.

If I understood your response, Mr. Meyer, you said it would be impossible to conceal, as this gentleman posits, that there is a possibility, concealing evidence of a defect before the time period expires, actual constructive knowledge before the time period runs and take an adequate remedial action, could not receive a legislative preempt from product liability.

Since he has raised that issue, perhaps you could support or suggest language that would address that gentleman's concerns.

Mr. MEYER. I think the language is unnecessary and would make it sufficiently unclear that there would be a lot of litigation over something that is irrelevant.

As I said, an aircraft in a much shorter period than that time, is subjected to not only an enormous amount of comprehensive tests with the FAA but in flight and all the requirements to maintain airworthiness.

To think that anybody would conceal anything, I can't imagine a manufacturer doing that anyway. But to think that somebody could conceal that would be, in my view, technically impossible.

Mr. DEFAZIO. I sat through a number of hearings on this committee where we heard from machinist after machinist where Eastern Airlines was falsifying maintenance documents, and it was denied by witness after witness from Eastern as a labor dispute. And the paper trail was a paper trail, but it wasn't a real paper trail.

Mr. MEYER. Different issue.

Mr. DEFAZIO. I am making a suggestion here that I think the gentleman raises a valid concern. I am certain that your company would not do this, but I don't know each and every manufacturer out there; and there are some, you know, heavily documented cases of foreknowledge.

It seems to me, there was a problem with asbestos that I think it was proven in court that the company had some foreknowledge decades beforehand.

Mr. MEYER. But it is not a regulated industry.

Mr. DEFAZIO. But the point is that you are saying that it couldn't happen; and if it can't happen, why don't we specify it. And if it does happen, then the 15-year statute of repose doesn't apply. And then that would help you with bad actors.

The problem I have is, when I deal with the aviation industry, that is the commercial aviation industry, their standards are always pulled down by the worst and lowest actor on the field because United might want to do a great job but it costs a lot of money to do a great job. Some substandard operator comes in, you know, and they don't do a great job. They cut corners, and they become the low ball people out there; and everybody else says, we are getting our lunch eaten by this low ball operator; what are we going to do?

There is a temptation to cut some corners. This would protect you and the integrity of you and your firm against those that might not have the integrity. You can't say it could never happen with any and every manufacturer out there; and so why not accommodate it since you are not going to violate it?

Mr. SONTAG. I am not an attorney, but it seems that if a company conceals knowledge of a defect that can damage people, there are other remedies that we have laws for. I am not the officer of a public corporation, but——

Mr. DEFAZIO. It isn't concealing. It is that the engine—someone in the corporation produces a paper like Ford with a gas tank saying this is a problem but it never gets to a certain point in the corporation.

Mr. SONTAG. Isn't that concealing——

Mr. DEFAZIO. I am not a lawyer. I don't start with that handicap.

Mr. SONTAG. I am glad you said that; not me.

Mr. DEFAZIO. I am going to investigate that.

If I could go to another line of questioning, I am curious—I have had this discussion with some of the interests that are going to be before us today—it seems to me that part of the problem here—and, again, I don't have any real good specifics on the magnitude of the problem—but grant that there is a problem here and that you are the deep pockets and a lot of the problems are not necessarily your—sort of deep pockets—some of you were.

Mr. STIMPSON. We were.

Mr. DEFAZIO. You are a better target than the local certified mechanic at the airfield who may have caused the problem in doing some maintenance on the craft.

And one idea I have raised is, maybe we ought to spread the burden and maybe there should be some requirement for a significant bonding or insurance by those people so that we are not always turning to the manufacturers in trying to construct a suit around something like, had a tail wheel.

What do you think of that idea, that there should be others who are required to carry insurance?

Mr. SUMA. I think you will find a lot of FBOs carry their liability insurance. And what you will find, if you investigate a little further, is that everybody gets sued when that plane goes down: I, as the manufacturer; Rick, as the ignition; the engine manufacturer; the prop manufacturer; the mechanic that worked on it; the FBO; the guy who sold him the airplane; and the guy somewhere, 150 miles away, that sold him gas one time also gets sued for that. And everybody is encompassed in the suit and has to bear that burden of paying the costs of either settling the suit or getting out of the suit.

So the people that are carrying insurance for those particular causes——

Mr. DEFAZIO. Is it adequate?

Mr. SUMA. Define "adequateness" in the state of frivolous lawsuits. It is not the actual cost of the settlement as much as the cost of defending those.

And our history has been, there is a very high cost for defending the frivolous lawsuit. And that is what drives the cost of the insurance up dramatically.

Mr. DEFAZIO. So frivolous lawsuits means suits that were dismissed with no favorable adjudication?

Mr. SUMA. The case may be a situation where it was clearly pilot error and the plane crashed, and they sued the manufacturer; and through the process of the trial, it was eventually dismissed.

Mr. DEFAZIO. And what insurance did the operator carry?

Mr. SUMA. The pilot himself may carry insurance on himself in particular. And he may carry insurance on his occupants, depending on the particular individual. It is not required.

Mr. DEFAZIO. And in dealing with the insurance question, are you purchasing insurance—or did you purchase insurance, or are you self-insured with reserves estimated against future liability? Or how does it work?

Mr. SUMA. Well the last time we were quoted insurance in 1987, we were quoted a $25 million policy with a $15 million deductible for value of $40 million insurance against 100 million revenues. So the company made the decision to go uninsured. And we can't get product liability insurance because of the large liability tail that we have.

Mr. MEYER. We self-insure to a certain level, and then we have an umbrella coverage beyond that.

Whether you have self-insurance or first dollar coverage—and you can get either one—you are paying a dollar or little more than for a dollar coverage. And if we were to insure first dollar, the cost would run $25 million a year for us.

Mr. SONTAG. We insure first dollar up to $300 million. We generally write our policy through London each year.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Gentlemen, I think all of us here sympathize with your industry, and we want to do what we can to create jobs.

I notice that Mr. Katzman, the lawyer who submitted a statement, has said that he feels this bill will provide the general aviation industry with, quote, "extra legal immunity that is not granted to any other industry."

And I wonder how you respond to that or how you answer that? Do you feel this bill has given you something that no other industry has?

I know you say that some of this legal protection is not necessary because you are a highly regulated industry. But almost every industry today is highly regulated. I think almost every industry including your's is overregulated.

How would you respond to that?

Mr. MEYER. Congressman, good question. We don't know—I don't know of any other industry in this country that is subjected to the product liability environment that general aviation manufacturers are.

We have looked, and I don't know of any industry that has been either impacted or literally destroyed as we have because of the unlimited liability environment.

And without some type of—we are not suggesting that we change any of the rules on joint several or on jurisdiction or anything else in the entire judicial environment. We are simply suggesting that, at some point in time, if this industry is ever going to survive or be reborn, we have to have some cutoff at some point for those claims to be filed.

If another industry had the same problem, I would recommend legislation for them. We don't know of another industry that has the same problem.

Mr. SONTAG. It is my understanding that several years ago the drug industry had the same problem. I don't know if it was DPT or the influenza vaccine, but people were leaving the industry so that they didn't have enough vaccine and this body made special legislation. I believe Congressman Glickman alluded to this in his statement earlier on.

Mr. DUNCAN. Another thing Mr. Katzman says in his statement that he submitted, he says, for example, 50 percent of the Lear Jet Model 23–Y manufactured in the late 1950s have crashed, and the other 50 percent are over 15 years old and will probably crash also, unquote.

I wonder how you would respond or if you would feel it would be reasonable. I assume that not all aircraft are alike. And if you are in the initial 15 years, we discovered that one particular type of aircraft that had a very poor safety record or if it had a very large number of crashes, that we would, in that case, extend the statute of repose by another 5 or 10 years in a case where a particular type of aircraft has had a very large number of crashes.

Would you gentlemen object to a provision like that, say if, over 20 percent of a certain type of aircraft had had crashes during the first 15 years?

Mr. MEYER. I would think the economy is going to take care of something like that. An airplane with that sort of record is not going to be produced very long.

Mr. DUNCAN. For how many years was that aircraft produced?

Mr. MEYER. I would think less than five years.

Mr. STIMPSON. It was produced between 64 and 66. It was the first business jet, the "trailblazer" Business Jet, and it was a high performance airplane, and the pilots weren't used to flying it. There were several accidents involved in the certification process.

Mr. DUNCAN. If we run into that type of problem in the future, would you object to an extension of this statute of repose in that type of situation, say a 5-year or 10-year extension of this statute of repose, if you had a type of aircraft that had a large number of crashes?

Mr. STIMPSON. Well, I agree with Mr. Meyer, I don't know how you would write that. I think, again, there are ways in the current regulatory system.

Mr. DUNCAN. I don't think it would be difficult to write at all. I think you could say that a certain type of aircraft had over 10 percent or over 20 percent crashes in a certain period of time.

Mr. STIMPSON. Are they pilot error crashes or any crashes? Are they malfunction crashes or defect crashes? What are they?

Mr. DUNCAN. If people crash, I don't think they care what kind of crash it is.

Mr. SONTAG. But over 85 percent of the NTSB investigations, over 85 percent, show that it was something other than the plane itself. And as a result, if you are talking about setting some kind of limit that says that if an airplane has more than 20 percent of its total model population crash within some period of time, you better subdivide it in terms of what is the airplane's fault and what is the fault of everything else.

That is not fair. That is very unfair. And I am not sure how you would do that.

Mr. STIMPSON. We looked recently at a long history of NTSB accident reports and how many were attributed to defect of the airplane, and it is less than 1 percent.

Are you going to take that and apply that as a standard? You are throwing a big camel at a small problem, if you do that.

Mr. DUNCAN. It is less than 1 percent of all crashes.

Mr. STIMPSON. Of the total number of accidents. We examined the period from 1983 to 1990, and it was less than 1 percent that were attributed by NTSB to an aircraft defect problem.

Beech did a similar analysis problem. They were sued 200 times in four years. NTSB did not attribute that even one to an airplane problem. And, yet, you know it cost them, like, $500,000 a case to defend themselves. It seems like how you judge this as to what—whether it was a manufacturer problem or a pilot problem or whatever, it seems like this is sort of a difficult solution.

Mr. DUNCAN. Do any of you know what percentage of these types of lawsuits against—product liability lawsuits, what percentage of those lawsuits go to actual trial?

And I would assume it would be a very low percentage. And then, going beyond that, of that small percentage that actually go to trial, what percentage of those actually result in a judgment by a jury against an aircraft manufacturer? Do you have that information like that?

Mr. MEYER. I can't give you an exact number other than a qualitative answer. It is very low. I would say it is less than 10 percent.

Mr. SONTAG. We have been involved in 35 product liability claims in the last 10 or 12 years, and we have never yet been to trial or had a judgment. Never.

Mr. SUMA. The majority of our costs have been the costs of defense. And the discovery is usually a very, very large cost. We have long interrogatories and depositions and expert witnesses, and you never make it to trial. You get to the point in time where you have to spend a lot of funds and dollars towards that activity.

Mr. DUNCAN. Of the 35 suits that you have been through, how many have you actually settled by paying money to a plaintiff?

Mr. SONTAG. Almost every single one, except for two in which we weren't even on the airplane. We were sued twice when our product wasn't even on the airplane. That is how loose our laws are. Twice we were sued and our product wasn't on the airplane.

Mr. OBERSTAR. Will the gentleman yield?

Were you found liable?

Mr. SONTAG. Thank God, no. But I will say this, that in both of those cases, it was absolutely ludicrous; and we ought to have some recourse under an existing rules of law. But in both cases I was unable to use the rules. And I think that is pathetic.

Mr. DUNCAN. How much did it cost to you get out of those two lawsuits?

Mr. SONTAG. In both the cases we paid nothing to get out of the cases, but our insurers paid around $10,000 to $15,000 per case just to get to the stage to get out.

How would you like that? How would you like to be sued for being in a bar fight and you weren't even in the bar? And that is our situation. It is so easy in most States. It is so easy to drag one of us into a lawsuit, and I think you cannot appreciate that.

In my case, as a component supplier, in any accident that occurs, all you have to do is have about 10 or 15 key words on a claim, and you are in the suit. Because in most States they have what is called "notice pleading." Some of you are attorneys, and you know what that means. All you have to do is give general notification of what the issue is and have some proximate cause in mind, but it doesn't mean that have you had to do any home work.

Mr. OBERSTAR. Mr. Sontag, you would be surprised how often Members of Congress can sympathize with your problem. And how often each us is blamed for something that someone else in this body has said.

Mr. Inhofe.

Mr. INHOFE. Let me address a couple of things that Mr. Duncan mentioned. I think, first of all, when you talk about design defects, that is going to happen in any product line. But you might make a comment as to what your responsibility in terms of notification both to the pilots and to the FAA and how the FAA participates in potential designs of airplanes and design defects.

Mr. STIMPSON. Mr. Inhofe, I would be pleased to supply for the record here Part 21.3 of Federal Air Regulations which goes into the details of what the manufacturer has to do when he is aware of a design defect or a problem malfunctioning and reporting to the FAA.

[The following was received from Mr. Stimpson:]

§ 21.3 Reporting of failures, malfunctions, and defects

(a) Except as provided in paragraph (d) of this section, the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or the licensee of a Type Certificate shall report any failure, malfunction, or defect in any product, part, process, or article manufactured by it that it determines has resulted in any of the occurrences listed in paragraph (c) of this section.

(b) The holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or the licensee of a Type of Certificate shall report any defect in any product, part, or article manufactured by it that has left its quality control system and that it determines could result in any of the occurrences listed in paragraph (c) of this section.

(c) The following occurrences must be reported as provided in paragraphs (a) and (b) of this section:

(1) Fires caused by a system or equipment failure, malfunction, or defect.

(2) An engine exhaust system failure, malfunction, or defect which causes damage to the engine, adjacent aircraft structure, equipment, or components.

(3) The accumulation or circulation of toxic or noxious gases in the crew compartment or passenger cabin.

(4) A malfunction, failure, or defect of a propeller control system.

(5) A propeller or rotorcraft hub or blade structural failure.

(6) Flammable fluid leakage in areas where an ignition source normally exists.

(7) A brake system failure caused by structural or material failure during operation.

(8) A significant aircraft primary structural defect or failure caused by any autogenous condition (fatigue, understrength, corrosion, etc.).

(9) Any abnormal vibration or buffeting caused by a structural or system malfunction, defect, or failure.

(10) An engine failure.

(11) Any structural or flight control system malfunction, defect, or failure which causes an interference with normal control of the aircraft for which derogates the flying qualities.

(12) A complete loss of more than one electrical power generating system or hydraulic power system during a given operation of the aircraft.

(13) A failure or malfunction of more than one attitude, airspeed, or altitude instrument during a given operation of the aircraft.

(d) The requirements of paragraph (a) of this section do not apply to—

(1) Failures, malfunctions, or defects that the holder of a Type Certificate (including a Supplemental Type Certificate), Parts Manufacturer Approval (PMA), or TSO authorization, or the licensee of a Type Certificate—

(i) Determines were caused by improper maintenance, or improper usage;

(ii) Knows were reported to the FAA by another person under the Federal Aviation Regulations; or

(iii) Has already reported under the accident reporting provisions of Part 430 of the regulations of the National Transportation Safety Board.

(2) Failures, malfunctions, or defects in products, parts, or articles manufactured by a foreign manufacturer under a U.S. Type Certificate issued under § 21.29 or § 21.617, or exported to the United States under § 21.502.

(e) Each report required by this section—

(1) Shall be made to the Aircraft Certification Office in the region in which the person required to make the report is located within 24 hours after it has determined that the failure, malfunction, or defect required to be reported has occurred. However, a report that is due on a Saturday or a Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday;

(2) Shall be transmitted in a manner and form acceptable to the Administrator and by the most expeditious method available; and

(3) Shall include as much of the following information as is available and applicable:

(i) Aircraft serial number.

(ii) When the failure, malfunction, or defect is associated with an article approved under a TSO authorization, the article serial number and model designation, as appropriate.

(iii) When the failure, malfunction, or defect is associated with an engine or propeller, the engine or propeller serial number, as appropriate.

(iv) Product model.

(v) Identification of the part, component, or system involved. The identification must include the part number.

(vi) Nature of the failure, malfunction, or defect.

(f) Whenever the investigation of an accident or service difficulty report shows that an article manufactured under a TSO authorization is unsafe because of a manufacturing or design defect, the manufacturer shall, upon request of the Administrator, report to the Administrator the results of its investigation and any action taken or proposed by the manufacturer to correct that defect. If action is required to correct the defect in existing articles, the manufacturer shall submit the data necessary for the issuance of an appropriate airworthiness directive to the Manager of the Aircraft Certification Office for the geographic area of the FAA regional office in the region in which it is located.

[Amdt. 21–36, 35 FR 18187, Nov. 28, 1970, as amended by Amdt. 21–37, 35 FR 18450, Dec. 4, 1970; Amdt. 21–50, 45 FR 38346, June 9, 1980; Amdt. 21–67, 54 FR 39291, Sept. 25, 1989]

Mr. INHOFE. That is the point that I want to get across, that that is already in place. Quite often, because the public is not very familiar with the technicalities of this industry—people assume that if a particular aircraft is involved in several crashes, that it is some design defect or some defect. In fact, in many cases, they are a result of pilot error.

I owned a Navajo which had several crashes in the '70s and I could never get my wife on it after that because she assumed that there was something wrong with it. And yet, in each one of these cases—because I studied these cases—I tried to persuade her it was pilot error.

Mr. SUMA. That particular case is true. And I think what you have to focus on in this whole picture is, if we are notified of a design defect, we have a very stringent system that we go through. That includes service bulletins which are distributed for the particular design defect. We get working with the FAA on the particular owners of the aircraft. We mail out the service bulletins. We follow up and work with the service centers across the U.S. and make sure that the fixes are going out into the aircraft. We supply parts for those. And we have a very rigid system. The FAA audits that.

We just completed our biennial audit with the FAA, and one of the key focuses of their reports was of accidents in the field and how we handled that information, disseminated it, looked at it, and saw if there were any design defects and how we followed it up in from service bulletins and how we went out in a timely fashion to protect safety.

Mr. INHOFE. I don't think the general public is aware. I have owned 93 airplanes in my flying career. I don't know how many service bulletins I have received. And you are constantly plowing through those things. Somebody is looking at these things carefully. When you talk about the age of the aircraft, that was a 24-year-old airplane at that time. So, you know, the airplanes really kind of regenerate themselves. You replace fuel pumps and all the different components.

I wanted to get to a specific here. I was so pleased, Mr. Meyer, when you were saying you made a public commitment. You are going to get back in the airplane business if this bill passes. And to make that commitment, you have to have some way of estimating what is the effect of the cost. I am sure that the underwriters have looked at the 15 year repose and how that is going to affect the costs of liability insurance.

Can you share that with us how that will allow you to be globally competitive when you weren't before?

Mr. MEYER. Understand that even with a 15-year statute of repose, the cost of product liability will not be insignificant. One thing that the bill will enable us to do is, actuarially at least, multiply what we estimate that cost is each year by 15, instead of by infinity which is what it is today.

We think that—at least actuarially today, I can't give you an exact number today, but we believe that could be incorporated in the price of the aircraft without making it unsalable.

Mr. INHOFE. I think the 15-year thing is somewhat arbitrary. We understand that. I would have negotiated for something less than that, but the idea is to let's get something passed. And if it produces this much in terms of jobs and helps the economy, what can we do in other ways outside of the aviation industry; and this is what I am interested in.

Mr. Sontag, you might be the best one for this question: When we saw the demise of the oil industry—I am from an area that used to be considered the oil capital of the world—one of the big problems we had was vendor supply. If we were to crank up that industry today, there are not enough structural companies to do it.

Are you having that problem in terms of vendor support? Are the suppliers out there? Have they diminished?

Mr. SONTAG. Every company has lost suppliers because nobody wants to sell anything to this industry due to product liability.

Mr. INHOFE. My concern is that the longer we wait to have some reform, the more expensive it is to get back into production.

Mr. SONTAG. We have probably half of the suppliers that we used to have 10 or 15 years ago, and we have attempted to vertically integrate in those cases where we can make components ourselves sometimes at greater cost. Other companies have the same story.

Mr. SUMA. We have 2300 vendors that we deal with currently. When we first started our reorganization we had approximately 2,100. We have had to recertify over 250 vendors as we restarted production.

These businesses either no longer would sell to us because of the product liability issue, or they had gone out of business. And it is a substantial cost, as you move forward, to recertify those components; and we still get notified on a daily basis of situations where we are no longer supplied.

One shining example is alternator belts. You have to stop and think what an alternator belt would do for product liability. The company refuses to sell to us because of the cost that they incur for the product liability and the exposure they feel they take in that situation. So now we are going to have to go out and find a foreign manufacturer to make the belts for these aircraft. So it is a typical example of what we go through.

Mr. INHOFE. Beechcraft isn't here today, but they did testify before this committee three or four years ago and you heard my opening statement. I attributed a figure to them.

Have either of you, Piper or Cessna, put together some kind of analysis to say how much per copy this costs the exposure of legal defense and the exposure of product liability costs you add to each vehicle?

Have you done it in that form?

Mr. SUMA. Well, we are looking at, as we go forward and come out of the bankruptcy—regardless if we have a statute of repose or not, we are going to be spending any where between $6 and $7 million a year just on product liability defense. It doesn't include any judgment settlements or payouts. So if you take that and spread it over $40 or $50 million of product sales, you can see the dramatic effect it would have on the cost of the product.

Mr. MEYER. It is difficult to give you an exact answer because it varied by model.

Mr. INHOFE. I understand that.

I am interested in that because I am going to be talking to some general aviation groups on the 6th of November, and I have been using the Beech figure for a long time, and I would like to see if I could come up with something from you guys. It is easier to explain to people. They relate to it better if they look at it as a cost per vehicle.

I understand that there is slightly more for the larger more sophisticated aircraft, perhaps; but, nonetheless, the ones that have been thrown out of the market have been the smaller trainers. Spartan School of Aeronautics is in my district, and they consume 80 percent of the runway activity at the airport. They even have some straight tails that they are still using. So I am sure they are anxious to see how we do today with this legislation.

Mr. OBERSTAR. The gentleman's time has expired.

The gentleman from Texas, Mr. Geren.

Mr. GEREN. No questions.

Mr. OBERSTAR. Mr. Collins.

Mr. COLLINS of Georgia. Just one question, Mr. Chairman.

And for you all's information, I am a nonlawyer. I am also a small businessman in the transportation business myself. I am in the trucking business, trucking timber.

Mr. Summa, you say in your testimony that, I believe, that the bill's passage will cause insurance companies to eventually feel comfortable about insuring fleets under 15 years old.

How long do you think it will take the insurance companies to get back into the field?

Mr. SUMMA. We have already had discussions with them. And with Piper's situation, it is different than Cessna's or Beech's would be. But we are looking within the first year or two years that they will be comfortable in insuring in our situation.

Mr. COLLINS of Georgia. Mr. Meyer?

Mr. MEYER. I think that we would probably continue with the same type of insurance structure that we have today so that we would self-insure some layer, and then have an umbrella coverage above that.

Mr. COLLINS of Georgia. That is all I have, Mr. Chairman. Thank you.

Mr. OBERSTAR. Thank you very much, gentlemen, for being with us this morning.

Our next panel includes Phil Boyer, President of Aircraft Owners and Pilots Association; Monte Mitchell, President of the Aircraft Electronics Association; John Olcott, President, National Business Aircraft Association; Kurt Herwald, Chairman and CEO of Stevens Aviation.

Mr. Boyer, you have a number of charts and very interesting testimony, and we appreciate it and look forward to your presentation.

TESTIMONY OF PHIL BOYER, PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION; MONTE MITCHELL, PRESIDENT, AIRCRAFT ELECTRONICS ASSOCIATION; PETE WEST, VICE PRESIDENT, GOVERNMENT AFFAIRS, NATIONAL BUSINESS AIRCRAFT ASSOCIATION; KURT HERWALD, CHAIRMAN AND CEO, STEVENS AVIATION

Mr. BOYER. Thank you, Mr. Chairman.

As you know, I am the President of the Aircraft Owners and Pilots Association. Some of you are members of what we refer to in the vernacular as AOPA.

Let there be no question, we issue strong support for the bill by Congressman Glickman and Congressman Hansen, H.R. 3087 and its cosponsors. We wish to thank the more than 247, as we understand now.

This is a little different than the testimony you have heard so far because AOPA represents the interests of more than 318,000 individuals who own and fly general aviation aircraft to fulfill personal and business needs. This is 60 percent of the active pilots in the United States.

And AOPA members own or lease 62 percent of the aircraft in the general aviation fleet. So what I am trying to define is, we are truly the consumer organization which represents the interests of the likely victims of the accidents involving these GA aircraft.

Thus we have a very strong interest in preserving and maintaining an adequate and equitable compensation system in case there are defects with these aircraft. Nevertheless, survey after survey, product liability reform is unquestionably a concern for our members. AOPA members believe that unreasonable product liability exposure has diminished the availability of affordable general aviation aircraft in this country and parts.

We are not here because we have an economic interest, as you have just heard, from the manufacturers of these airplanes. We are here because we believe that product liability reform is in the best interest of AOPA members. They are the consumers who own and operate the aircraft. The manufacturers have already cited statistics showing you the decline in the production of the piston powered aircraft. And this is concern by our members at the same time who operate the fleet.

Let me turn to surveys we have done by our members and show you one outstanding graph. When asked about the future of the general aviation area, a majority of AOPA members unfortunately are pessimistic. These are the people who make up the general aviation marketplace as consumers, and they are pessimistic. This is alarming because these are also the heavy users of the system.

Let's look at facts and figures about general aviation right at this moment. First of all, the pilot population that we all talk about. In its heyday, it was well over 825,000. The last official count last year, there were only 682,000 active pilots. That is the lowest number of pilots in this country in the last 25 years.

But what is important as we heard from others is student pilot population. What has happened with student pilots? Last year, the last official count that we have, 78,000 student pilots entered the system. This is the lowest count in the last 22 years.

And based on figures we receive monthly at AOPA, we know that 1993 will be even lower than that record low number.

Senator McCain, as we talk with the other side, commissioned a blue ribbon panel that just concluded its finding and found that we will suffer, in great numbers, trained replacement pilots in the next 5 to 10 years.

Let's look at those who go on to get private licenses, and here we are in another all-time low. You can see the direction that the graph is going.

I would not like to put a pall on the day. This is the good news. That is the safety record of the general aviation fleet, whether you measure it in accidents per 100,000 hours flown or whether you look at fatal accidents, it is the best ever and getting better.

Why is all of this bad news depicted on these charts? Well, what we did is we went to the consumers, our members, and we asked them. And a full one half have cited the product liability problems are causing these ills. And then another 25 percent say the cost of operating, renting, owning a general aviation aircraft is a part of the problem. Other surveys reveal that 97 percent of our members believe that product liability is a major concern for the industry.

We listen to our members through surveys like this and others, and we have heard about product liability for some time. So two years ago we began thinking about the problem and doing something about it.

As a matter of fact, in 1992, we took several trips to Wichita. We met with some of the manufacturers that you even heard from today with the Manufacturer's Association. We got together in 1992 with Congressman Glickman, and we talked about the problems that were existing in the industry that we, as consumers, are in.

And at that time, in 1992, we identified that the big bills were going nowhere, that we had to carve out specific relief if we were going to get anything to happen before we see general aviation crumble. And for that reason we isolated ourselves as consumers to the statute of repose and suggested it in 1992. And we are pleased to see that these two bills are before us in the Senate and the House, because they do represent what we believe is an important step forward.

To be sure we were on the right track, we asked the consumers once again, our member, pilots, owners, what they thought about statute of repose legislation; and 92 percent indicated that you, and your fellow Members of Congress, should pass such a bill. Never before in AOPA's history, when we have surveyed an issue, have we gotten this kind of overwhelming consensus.

And, more important, there is also an expectation, because I said cost was the second biggest item, there is an expectation that this would bring modest price relief because we have heard about the savings in certain companies that manufacture aircraft.

The 15-year statute of repose bill proposed by Congressmen Glickman and Hansen will aid the manufacturing industry by substantially increasing, as you heard, the difficulty of filing nuisance lawsuits against major aircraft manufacturers. Yet the bill preserves the balance we need as consumers that must insist that we have a remedy in cases where there is a defective part or components actually to blame for an accident.

And you heard that the average age of the fleet is 28 years old. There is no such thing as a 15-year-old aircraft or even a 28-year-old aircraft. There may be a 28-year-old airframe that is a collection of lots and lots of new parts that are ticking on, each one of them, the 15-year clock. And that is a very important element as far as this being looked at as any major form of tort reform. It is not.

Obviously there are a few aging products, but we hope this bill will stimulate the production of many more new aircraft, particularly in the training and the four-place aircraft fleet. But more important than that, we suffer a real shortage of these parts to put in our airplanes today.

Let me give you a story. A Piper Saratoga, a six-place airplane, that is used for utility purposes and charter, it sat on a ramp for nine months waiting for a landing gear actuator switch because we had to wait until the manufacturer got around to it. If you don't think this affects the cost of general aviation, let me tell you it really does. And further, research and development, as you heard from Russ Meyer himself, is virtually stopped in this industry.

Do you know that we are still using, as explained by Ross Sontag, magnetos in general aviation airplanes? Magnetos that haven't been used in cars since the early 1900s. Magnetos, even though there are electronic ignition systems in all the cars we drive today. They haven't been converted in aircraft.

Never before in history has a consumer group been so willing to help an industry by delicately balancing our right to sue a manufacturer and giving up some of our concerns to support present problems. The introduction of this bill has presented us with an outstanding opportunity to address the liability problem.

Mr. Chairman, we invite you to mark up the bill and report it to the House before the end of the current session of Congress because we will support this in the biggest way as you can see possible. And you can see that our members are fully behind H.R. 3087.

Thank you for this opportunity.

Mr. OBERSTAR. That is certainly very strong testimony.

We welcome you, Mr. West, in place of Mr. Olcott. And it is fitting that you should deliver the testimony. You are a tireless and vigorous advocate for aviation and for the NBAA.

Mr. WEST. I don't know if I can continue after that.

For the record, I am Pete West, and I am Vice President of Government Affairs for the National Business Aircraft Association.

Mr. Chairman, Mr. DeFazio, Mr. Clinger, Mr. Inhofe, it is a real pleasure to be here today representing the Association on this very important issue.

We also appreciate the opportunity to testify about an issue that is critical to the Nation's aviation system and the future of aviation community.

It is also a pleasure to be up here with my colleagues from the industry and, again, especially before you all.

As I indicated, Mr. Olcott had an unforeseen circumstance, so for the record, is not going to be able to be here. I am here in his stead.

NBAA is an association that represents over 3200 member companies that daily utilize business aircraft for the furtherance of their business activities for productivity and efficiency reasons, taking advantage of the two most valuable resources for a business or for any organization—people and time.

Jack did want to send his best regards to all of you and express, on behalf of the entire NBAA Board of Directors and everyone associated with the business aviation community, how important this legislation that Mr. Glickman and Mr. Hansen have introduced is.

Our members, who collectively account for more than $3 trillion of the GNP, which is about half of the GNP, and employ a little more than 16 million people plus worldwide, truly understand the value of our aviation system and the use of general aviation aircraft. And we think this legislation is very important for the future of the use of those aircraft.

I will summarize the statement that Mr. Olcott submitted last week to this subcommittee. And, I hope the full statement will be placed in the record.

We add our support to that of GAMA, the International Association of Machinists, AOPA, the President's Commission on the Airline Industry and the Aviation Industry, as well as the majority of the Members of this subcommittee, the Public Works Committee, and, quite frankly, the majority of the Members of the House of Representatives who have cosponsored this bill, as well as the growing number of cosponsors in the Senate who are supporting the identical bill in that body.

I will also say as the coordinator of the National Aviation Associations' Coalition, which you heard mentioned by Ed Stimpson and Russ Meyer earlier, an organization which represents 24 aviation associations representing the airlines, labor, aircraft manufacturing, freight and cargo, parts providers, airports, the consumers, pilots, general aviation and business aviation, that is the entire aviation community supports this legislation.

The coalition, at the end of last year, presented to President Clinton, to this subcommittee, and other appropriate officials in Congress and in the President's cabinet, our aviation agenda for economic recovery. And, in that document, which was presented all to the Commission, we expressed strong support for this statute of repose legislation, which is truly fair and reasonable.

You might ask why NBAA, a consumer or user organization and operators of aircraft, would support legislation dealing with an issue that affects supposedly, on the surface, just the manufacturers of the aircraft. Well, again, we speak as part of an aviation community and, specifically, a general aviation community that is greatly affected by the product liability laws and this legislation. And, we support this legislation for a number of reasons but mainly two key reasons:

First of all, this industry is experiencing financial and operational hardships due to existing product liability laws. Clearly this industry has been hobbled, and it was once the leading industry in the world for producing these aircraft. The cost of maintaining aircraft continues to rise due to product liability awards and the cost of legal defense for the manufacturers. A result of this is aircraft parts are much more expensive and not available in some cases.

You heard from Piper earlier. They relayed their ugly story. We cite the fact that Piper Aircraft, for example, carries a long tail of liability exposure as a result of over 70 successful years of aircraft production; and is no longer readily able to supply parts for most of those 70,000 aircraft.

Cessna and Beech, as have you heard before, are similarly affected.

Secondly, for the future, we are very concerned about the innovations stifled by product liability costs. Although product innovations continue at the higher end of the market, innovation in mid and lighter weight aircraft design and manufacturing has been decimated.

The availability of new training aircraft is acutely alarming. In what aircraft are we expected to train our future pilots? This is the future of aviation. Our aviation system's future depends on training new pilots.

Cessna, Piper and Beech used to supply the lion's share of the world's aircraft. Today, France is the leading supplier of training aircraft to the United States.

Without new piston-powered single, twin engine, and cabin class planes produced in this country, these indigenous industries may vanish. Aircraft like these will be built, but they will probably come from offshore manufacturers. Clearly, as applies to general aviation, our Nation's present system of product liability is broken.

I might suggest that it is broken in some other areas too, but we are dealing with product liability today.

It does a very poor job of satisfying its intended and worthy purpose, to compensate in a timely manner, injured parties due to the negligence of manufacturers. If product liability is meant to force product improvements, it has accomplished the opposite. It has killed incentives to produce light aircraft and perpetuated older designs.

On all accounts, our grossly inefficient product liability system has failed.

The Glickman-Hansen bill will bring some semblance of reason to this issue. The basis for the bill is the simple logic that if a product has functioned safely for 15 years, it has demonstrated that its original design is not defective and therefore not subject to a liability suit.

Satisfactory service over a long period should be sufficient evidence that the product reflected the existing state-of-the-art and that the manufacturer met the legal obligations to provide an appropriate design at the time of delivery, a design that has obviously been regulated and monitored by the FAA.

Again, we appreciate your strong support, Mr. Chairman, and the support of the majority of this subcommittee and the full Committee on Public Works. All we care for is fair and reasonable law in this area. And, we look forward to its passage and the signing into law by President Clinton in the very, very near future.

Thanks for this opportunity and I will be glad to take questions at end of this session.

Mr. OBERSTAR. Thank you. I particularly appreciated the specific cases that you cited of product liability lawsuits. I think they are very, very revealing. I don't want to cut you off at this point. We do have votes on the House Floor. I would like to ask Mr. Mitchell and Mr. Herwald if you could sort of condense your testimony.

We will break after your testimony and resume at 1:30. We have activity on the House Floor and other commitments that the Members have, and we will come back and resume your questioning. But at this point, at least your principal statement, will be on the record.

Mr. MITCHELL. All right, sir.

Mr. OBERSTAR. Your complete statement will be in the record.

Mr. MITCHELL. My name is Monte Mitchell. I am President of the Aircraft Electronics Association. We represent the folks that electronically keep these airplanes flying in the air, and it is a pleasure to be here with this distinguished group of aviation experts to discuss with you, the Members of the Aviation Subcommittee, the opportunity that we have to revitalize the general aviation industry through the enactment of the H.R. 387.

The electronic association is the primary trade association for FAA Part 145 certified repair stations which sell, install, and maintain avionics and electronic equipment and systems in the general aviation aircraft.

We have all sorts of companies. Even though Piper has gone from Congressman Clinger's district, we have a two-man shop, Beechwood Operating Service. We also represent the airframe manufacturer and the avionics manufacturers such as Beech and Cessna and Piper and Lear Jet and a new one, Sears design in Minnesota.

We represent the educational institutions that offer aviation-related curriculum. Mr. Inhofe mentioned Spartan. They are one of our members.

To be more brief, as you heard over and over again throughout this testimony, the great—once great American general aviation industry has been totally crippled and devastated by unfair product liability law, which has stopped production, as you have heard many times this morning, of single engine piston aircraft which is the very heart of the world's general aviation aircraft fleet.

The 15-year statute of repose will be the major stimulus for the United States general aviation industry needs to reopen production lines of airplanes and component parts, such as avionics and navcom, and auto pilots. This will create tens of thousands of new, stable, high-paying, private sector, manufacturing, engineering, and related support jobs. Not only will it help our industry, it will help the overall economy and help the local grocery store and barber shop as well as expand the local, State, and Federal tax revenues through payroll sales and related taxes.

As you can see from the description that I gave you of our membership, our members represent the frontline businesses and employees who, along with their valued aircraft customers, depend on a steady flow of general aviation aircraft for their businesses to survive.

However, the past decade, each one of those businesses has had an unfortunate element in common. I don't know of any AEA member company that has not suffered severe economic consequences as a result of this unfair product liability situation. Thousands of jobs have been lost and will continue to evaporate at our members' facilities as business stagnates under the weight of unreasonable product liability cost which is the single most important factor contributing to the steep decline of U.S. production of general aviation aircraft.

But even in this depressed state, the general aviation avionics sales installation and service market is a large economic contributor to our economy, and it is valued at approximately $1.5 billion annually; and there is room for great expansion because there is a large pent up demand for single engine aircraft.

Our fear is that this demand—we know it is going to be filled by somebody. Our fear is that it is going to be filled by manufacturing companies such as the Aerospatiale, Honda, and Kawasaki instead of Piper and Lear and Beech and Cessna. That is our big concern.

This demand will not be filled by American companies as long as we allow lawyers to moonlight as pickpockets looking deep and endlessly into the financial pants of the original manufacturers.

We recognize that the original aircraft and component manufacturers absorb the major financial cost of product liability litigation and damage awards, and we are not looking for a free ride in the marketplace as was suggested in an October 19th, 1993, Wall Street Journal article. In this article, an aviation plaintiff's attorney stated that this bill, H.R. 3087's passage may help manufacturers but will help hurt maintenance shops because passengers and customers will be suing them for larger amounts of money. This is pure speculation by a lawyer who can't create jobs. However, he can continue to fleece the industry as long as we allow him to unfairly utilize the judicial system to obtain his contingency fee at the fatal detriment of our industry.

AEA members have always and will continue to accept responsibility for the quality of work they perform. H.R. 3087 does not change that situation. We believe that H.R. 3087 guarantees that everyone who alleges an injury in a general aviation accident will have access to the court system to pursue appropriate judicial remedies.

We think this is fair and reasonable, and whatever bump our members may see in liability insurance premiums is well worth the alternative which is the collapse and disappearance of a United States industry.

So the Aircraft Electronics Association is asking you to support a simple and fair 15-year statute. The President's airline commission, as you heard this morning, endorsed this totally. We think it has the support of the entire general aviation community, the manufacturers, maintenance facilities, labor, and all consumer groups.

So I urge you to recognize this strong and comprehensive support, and I ask for your support to revitalize the industry that has went dead.

Somebody earlier—a witness a couple of times mentioned that this is a win-win situation, which reminds me of the taxidermist and the veterinarian that opened the shop with the one sign over the building that said: Either way, you get your dog back. So I think that is what we got here.

Mr. OBERSTAR. We are going to have to break at this point. Mr. Herwald, we will come back at 1:30 and begin with your statement.

We will stand in recess.

[Recess.]

Mr. OBERSTAR. The subcommittee will come to order and resume its sitting on the General Aviation Revitalization Act of 1993. And also resume with testimony from Mr. Herwald.

Mr. HERWALD. First of all, I want to thank Congressman Glickman for inviting me and also all the hundreds of Congressmen who have supported this bill. We consider it very important not only for the immediate health of our industry but also for the long-term growth of aviation in general.

My focus is going to be, as it was in the written testimony, on the service sector of the industry. I think that the users have been well represented here as has the manufacturers. Stevens operates five FBOs and FBOs are fixed base operators, the primary link to the general aviation community between the airports and the users who provide all the typical services that are required to operate a general aviation aircraft.

The growth of the FBOs took place starting in the 1940s and really took off through the 1960s and 1970s. The growth in the number of FBOs was fueled by the profits that were available from the distribution of piston aircraft, as has been mentioned a number of times today, during the 1970s, well over 100,000 aircraft were distributed to the public.

Most of these aircraft were sold via FBOs and was their primary source of profit and that profit subsidized the rest of the services that our industry provides to the airports and the aviation community.

Since 1980, and the fall off in the manufacture of light aircraft our industry has shrunk by between 50 or 60 percent depending on which measures you are looking at and continues today to decline at the rate of 1 percent per month. Since the start of the Gulf War we have lost about 1,200 FBOs.

I disagree with some of the numbers that have been put forth here in terms of impact on employment because I think they have underestimated the impact on employment in the service sector of business. This was not part of my written testimony, but after hearing others I think it is important to point out. Six thousand FBOs the majority selling fuel to general aviation and commuter operators have gone out of business in 12 years and I think it is at a minimum. They must have employed at least 60,000 individuals and our estimate is that it was in excess of 200,000, that much employment in FBOs has dropped. I will talk more about that in just a little while.

The decline in FBOs, as I mentioned, is due to the lack of profitable sales opportunities from new aircraft. Today 57 percent of FBOs report being profitable and unfortunately 43 percent reported losing money. The average profit among those that are profitable is less than 5 percent of sales and less than 5 percent return on investment. Industry observers believe that the number of FBOs is going to fall from the 4,200 that exist today to about 2,000 located at 1,500 airports.

If this were to occur, it would mean that the vast majority of airports in this country would no longer have service providers to aid the aviation community and to add service and value to the aircraft they operate.

I don't believe that this—that the passage of this act will be a panacea for our industry. Far from it. We have a lot of other problems out there—the price of fuel, the other things that people have mentioned—I do think that the introduction of more light aircraft would at least stem the tide and allow the current service infrastructure to exist in the long run. I also believe that it would create quite a few jobs in addition to the ones we have today.

And we did a brief analysis on the impact that we thought it would have on the service sector alone. We believe that if we increased the light aircraft fleet by about 30,000 planes over a five or six year period that the impact on just FBOs would be to increase the number of employees by about 13,000 which would generate approximately $300 million in payroll.

The industry would also benefit by approximately $2 billion of additional revenue both from the sale of these planes and from servicing them.

These jobs are good jobs. They are actually in many ways better than manufacturing jobs in that they do not bear a resemblance to the stereotype of a service industry job. They are not low paying. They are not low skilled. They are highly skilled employees earning a great deal of money. Stevens employs 350 individuals and has a payroll of about $10 million annually. One hundred sixty of those are technicians who work on the planes, mechanics. They earn an average of $28,800 at Stevens, base pay, not including overtime and benefits. We also spend approximately $2,000 per employee in the technical services.

Most of our technicians start a career with Stevens aviation. They stay with us to retirement. At our oldest locations, such as South Carolina, the average tenure of our technicians is 21.5 years. So these are not the type of service industry jobs that are widely criticized as not being able to provide for a primary wage earner.

Our employees have routinely enjoyed the benefits that are associated with America: House ownership, sending their children to college, and enjoy a relatively affluent life-style and a fairly secure work environment. In addition, these jobs are not subject to export. Very few planes in America are serviced outside the boundaries of the United States. And I do not see that changing other than maybe in some extreme border areas, so these jobs are not only well paying, but they are very secure for the country and for the individuals who hold them.

The lower paying jobs tend to be stepping stones to long-term careers in aviation such as piloting and while people are earning their technical education, so this apprenticeship program has developed over a 40- or 50-year period and has served the industry well, which leads me really to my next point and that is I think many of us believe that while we cannot quantify it that America's leadership in aviation was spawned in part by the demand created by the 500,000 pilots in the United States.

Nowhere in the world is aviation accessible as it is in the United States. People want to be in aviation. Very few people want to make sheets or even want to make automobiles. Many people want to work on aviation. And they often find a way to deploy their skills and their enthusiasm in a way that creates new products and product application. I won't go into it. I talk more about it in my written testimony, but any of you who have been at the Experimental Aircraft Association know what I am talking about.

Also the size of the fleet being measured in the hundreds of thousands of aircraft often provides the volume necessary to manufacturers to justify the development of new technology. The 12,000 turbine aircraft in the general aviation fleet is not a wide enough market to encourage tremendous innovation. These 200,000 other planes do stimulate that.

I also, while this is not in my testimony, take exception or at least am willing to discuss Congressman DeFazio's suggestions about insurance and liability of FBO and maintenance providers. We spend a great deal of money on insurance, about 5 percent of revenue in the technical service areas.

Most FBOs are required by their airport to maintain a minimum of $10 million. Liability insurance and companies such as Stevens routinely maintain about $50 million liability insurance. The suggestion we may not be stepping up to the plate for our fair share of the liability is an inaccurate assessment of our industry.

I will repeat what everybody else has said. That is the entire aviation community supports this bill. If the opponents are trying to protect somebody, it is hard to see anyone they are protecting other than their own source of income. And myself and also the others in the service sector very definitely support this legislation and would like to see it progressed. That is it.

Mr. OBERSTAR. Thank you very much for your presentation. I must say you have also provided some substantial factual information on sales, services, payrolls, training and the spread of those benefits into the society and the economy. I appreciate that. It is very helpful.

Mr. HERWALD. Thank you.

Mr. OBERSTAR. Mr. Boyer, one of the arguments that we have heard about the product liability issue is that while it is driving the manufacturers, Beech, Cessna, et cetera, out of the manufacture of new aircraft, it is opening the way for indirectly and not intentionally for kit aircraft where parts are sold from which the purchaser can build his or her own aircraft.

How widespread is that practice and what are its implications for safety and for, say, product liability?

Mr. BOYER. Well, there is an organization, the Experimental Aircraft Association, EAA, that has been referred to a couple of times that basically represents those people. I wouldn't say that of our membership, they aren't kit builders out there. And there is interest in this month's magazine cover for AOPA, as a matter of fact, that contains that. It is infinitesimal, though, in size compared to the 200,000 aircraft now in general aviation, which the kit builders would call the Spam cans, the Chevrolets, the Fords of the general aviation fleet.

It is also interesting to see that while the sport aviation or kit-built market is growing, the actual number of aircraft that are actually in the air providing some personal or utilitarian transportation is quite low. It is not unusual to find a buyer of a kit working years and years and to many of those people the building of the kit is the end in itself, not the flying of the airplane itself. So while it is emerging and new technology is occurring there and certification standards are being eased, it isn't at the moment in the same even league of providing aircraft that can be used by companies like Stevens for charter or to be used for business purposes or even to be used for—many of these are certified, remember, when they are kit built as experimental aircraft.

Mr. OBERSTAR. So their experimental status means that if an accident occurs, as we have seen in the testimony from Pete West reciting case after case of accidents, that if those same things occurred—same accidents occurred with a kit aircraft, there would be no recourse against a manufacturer because the kit builder is the manufacturer?

Mr. BOYER. The kit builder is liable to produce over 50 percent of the aircraft, therefore that relieves in many cases——

Mr. OBERSTAR. It is the 50 percent test, is it?

Mr. BOYER. That is correct. That does occur. You asked about safety records and while I don't have the specific numbers, I can supply them to the committee. The safety record of that segment of aviation is nowhere near what I portrayed on the two graphs up here. It is worse.

Mr. OBERSTAR. Okay. One of the arguments of the Trial Lawyers Association is that without the product liability test and the ability to sue in court, manufacturers would not be under pressure to produce safer aircraft. The argument is that because of this legal course of action, manufacturers improve designs, improve manufacture, improve product.

Can you cite a design in improvement or a component improvement that has resulted from any one of the lawsuits such as the case, the famous case of Piper, if they had built the seat higher, they could have seen out the window?

Has any product improvement or design improvement resulted from these lawsuits?

Mr. BOYER. It has not been to my knowledge and that is a good question probably for the manufacturers. The process, first of all, we have got to go back to the fact that the Federal Aviation Administration certifies these aircraft in what Russ Meyer described as a four to five-year process and is a quite extensive and expensive process. So, first of all, they are certified to Federal standards.

Now, if an accident occurs, another agency independently investigates that accident, as you well know, and out of the findings of the cause of accident, nothing to do with the legal remedies available to the victims or the estates, comes suggestions which may involve pilot skills or pilot training, additional parts problems that may need to be corrected, new procedures that may need to be done in maintenance. That is the service bulletin, their worthiness directive aspect that was referred to.

And as an owner of a 25-year-old, single-engine, four-place airplane, I know approximately monthly I get a communication as an owner of that aircraft from Cessna, Russ Meyer's company, advising me some improvement has been made or could be made and the severity of doing that and how fast to take that action.

To my knowledge, the industry itself under Federal regulation is doing the job of policing for safety, not these lawsuits.

Mr. OBERSTAR. Mr. Mitchell, do you have any comment or Mr. Herwald?

Mr. MITCHELL. I don't believe so.

Mr. HERWALD. I have one as a response to Congressman—Attorney Katzman's suggestion about the covering up defects and that is there is a system in place called the air worthiness directives that can be issued by the manufacturer or the FAA and that most people choose to comply and if they don't they have the authority to ground the fleet. So it is just something that we want to get on the record.

Mr. OBERSTAR. Thank you.

Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. Thank you, panelists, for your contribution. I think our hearing may have some nay-saying a little later on, but it strikes me there is pretty much unanimity within the aviation community for this legislation. I just have a couple of questions.

One just for my information. It has been a couple times referred to that this would have an effect or be helpful in terms of training the next generation of pilots and we have seen and your chart showed a rather precipitous decline in people taking the pilot training and so forth. But I have difficulty in seeing the correlation between product liability and the reason we no longer seem to be training as many pilots.

It would seem to me to still be a great interest on the part of young people to fly. And what is the correlation in your view?

Mr. BOYER. In my view this is something we studied very closely because the livelihood of our association, our representation depends on how many pilots there are out there and I am worrying now about the next century. The system has completely broken down.

As Kurt said, there were 6,000 FBOs that went out of business. There were thousands of dealers for aircraft that are gone. When the manufacturers come back to building aircraft, as Russ Meyer stated he would do today from Cessna, they don't just come back and start cranking out aircraft. They start advertising, buying airplanes. And the kinds of airplanes he has publicly stated he would build are in the training category of aircraft. So in order to sell those, the best prospect for buying an airplane isn't something like me that has been flying for a long time. I would probably own one.

The best prospect is somebody who goes out and learns to fly and says, gee, I could own my own airplane. Then comes a whole advertising mechanism that the manufacturers will begin to support. That has completely crumbled away. FBOs will get back into, gee, I can sell airplanes again. I had better encourage people to learn how to fly and begin flight training.

So we have a whole infrastructure that has begun to break down and needs to be fixed. You are absolutely correct in saying product liability itself doesn't create new pilots. The planes that are the ones that are truly aging, the ones that are Aloha Airlines and the ones we are worried about in the commercial fleet are the two and four-place training fleet which, frankly, have had so many landings and have been so heavily used that they are the ones that are going to wear out first and they need to be replaced or we won't have planes to be training at all.

Mr. CLINGER. That is what I thought earlier in the hearing because we are not manufacturing new ones and you make a point that trainers are particularly vital to that.

Mr. HERWALD. One of the things that is really a supply and demand issue is while training organizations are usually not very well capitalized, it is not a hugely profitable area to be in, new plane reduction would alleviate some of the price pressure in the use market and provide more attractive aircraft for training.

Today if you were to go to a flight school, you would probably be confronted with a 30-year-old trainer that discourages many people from taking up a sport that they recognize is inherently dangerous. So if you took off some of the pricing pressures, they would be able to upgrade their fleet and more planes in the fleet would create more advertising and promotion of the training product itself.

Mr. CLINGER. Okay. So it is really kind of marketing and also the economics.

Mr. MITCHELL. I think it has a very big effect—I think the product liability situation has a big effect on student starts. There would be a trickle down effect on the price of an airplane which means that the flight school can charge less per hour. It is very expensive to learn to fly today. I think the effect could be dramatic.

Mr. CLINGER. You would see the cost of planes declining as a result of getting this?

Mr. MITCHELL. Certainly.

Mr. CLINGER. I am interested in your enthusiasm, you suppliers of parts and so forth, to the enthusiastic support of this. Because it would seem to me that you could be more vulnerable in a sense. I mean an air frame manufacturer clearly after 15 years he is home free or the statute of repose would take him out, but rarely—it seems to me that a lot of the parts that are replaced in aircraft never get to the 15-year mark. They are turned over more rapidly. So it seems to me that you would really be in some senses more vulnerable because of this statute of repose.

Mr. MITCHELL. When you say parts, the avionics, the radios, the comms, the flight directors, auto pilots, our study showed you get a complete new avionics package in an airplane about every eight years. So if an airplane is 15 years old, because of the modifications that our members do to it and then avionics, it looks like a totally different airplane 15 years after it leaves the line.

Mr. CLINGER. So the 15 years isn't going to help you much.

Mr. MITCHELL. It will produce a lot more airplanes that our people can work on and put radios in.

Mr. CLINGER. I see. Thank you. Thank you, gentlemen. Go ahead.

Mr. HERWALD. Responding to that same question, I found it interesting when the trial lawyers were writing articles in the journal that they said people in my business would be sued more often and yet we know from experience that whenever an aircraft that we have had anything to do with generates a lawsuit then we are invariably named in it anyway. It is kind of like you can't beat me harder, so I don't think there is really an incremental threat there.

I do believe, however, if you remove the prospect of very large settlements which is associated with the deep pockets that there would be less people motivated to undertake the effort of a suit. Thank you.

Mr. OBERSTAR. Well, in further response to a question I raised earlier, Counsel Heymsfeld pointed out to me evidence from our previous hearing on a committee staff summary, allegation by the Trial Lawyers Association that the Beech craft, Bonanza, a V-tail aircraft claimed it had a propensity for breaking up in flight, said that a jury in 1985 found liability and awarded money damages in sending a clear message to Beech to fix the V tails and then and only then were they fixed.

On further inquiry in the matter, however, we find that the problems with the Beech V tail stem from aerodynamic characteristics unknown when the aircraft was designed in the 1940s. After an extended Beech FAA program, the original deficiencies were identified and corrected and made safer as a result of FAA Beech cooperation, not as a result of the lawsuit. I think that ought to be included as the response from the general aviation manufacturers to the Trial Lawyers Association. I think we have to kind of do their testimony for them because they aren't here.

Mr. Herwald, wouldn't you be concerned that the statute of repose might result in more litigation, this rolling limitation on liability would raise more litigation for your company and say that of those Mr. West represents?

Mr. HERWALD. As I just mentioned, no, I don't believe so. And again the reason is—there are a couple of reasons. One, we are already included and named as a defendant in every instance that we are aware of where one of our clients was involved in a fatality or where a suit was generated. So I don't think that there is anything additional that we would be able to get brought into.

I do think that there would be less of a motive, less economic incentive to institute these suits if the people they were suing were service providers who do not represent the same size companies that say Raytheon does or Techtron. So I believe the process of a very large award would be removed and you would have a less incentive to create these suits. I think that would indirectly benefit us.

And, finally, we believe that the benefits to the industry would be greatly outweighed if there was an incremental increase in our litigation expense. It would probably be worth it for the long-term health of the industry if that is what it takes.

Mr. OBERSTAR. Well, Mr. Boyer, if this legislation is enacted and manufacturers resume or scale up their production of aircraft, which types of aircrafts are likely to be built and what might be the market price for such aircraft?

Mr. BOYER. Well, once again, that is probably a manufacturer's question. I would probably not be able to answer as probably you would be. From where we sit as consumers, we know once again, as I stated, the two and four-place single engine piston powered airplanes are the ones that are basically wearing out the fastest in the fleet. There are approximately 50,000 aircraft transactions a year in the United States. This is a fairly stable, healthy industry, used aircraft and the ones that have the greatest turnover at this moment are in that particular universe.

Russ Meyer himself stated publicly they would begin building 172 and 182 and 206. Those are basically four place planes, the 206 being a utilitarian aircraft. You heard mention that a manufacturer may be soon getting an order from the University of North Dakota for training airplanes. These schools in Florida, the University of North Dakota is another one.

There are some in Illinois and Missouri that specialize in flight training, within Mr. Inhofe's district. They are in great need of replacing their training aircraft because they put so many hours on them. These are the ones that I think would come to market sooner. They would be the lower price category. In other words, I am talking about aircraft under $100,000 to $175,000.

Once again, we as consumers would be as anxious to hear the price equation brought out from the manufacturers, how much will one of these cost in today's market, but we can predict based on what the foreign companies are selling them for that they would be in the range that I just talked about and there would be a marketplace to buy those airplanes.

Mr. OBERSTAR. Thank you very much. That is very, very helpful. We appreciate your testimony today.

Mr. MITCHELL. Thank you.

Mr. OBERSTAR. Our next witness is David Ian Katzman, an attorney, who comes on his own representation today. Mr. Katzman, welcome. We are glad to have you. You present another viewpoint, a differing perspective from those that we have been hearing this morning and we appreciate your testimony.

TESTIMONY OF DAVID IAN KATZMAN

Mr. KATZMAN. Thank you. Good morning, Mr. Chairman. Good afternoon, excuse me.

Mr. OBERSTAR. Good afternoon.

Mr. KATZMAN. Before I begin and I am going to depart from my written submission and speak somewhat extemporaneously with some reference to some notes I managed to take this morning.

Mr. OBERSTAR. We referred liberally to your testimony because it did present an opportunity to challenge the thinking of other witnesses. Your statement in full will appear in the record.

Mr. KATZMAN. Hopefully it generates thought and asks more questions or the right questions.

But before I begin, I would like you to know that while I am a trial attorney, and I am not, as you know, appearing on behalf of ATLA, although I am a member, I am also a pilot. I am a commercial pilot. I hold an instrument rating multi-engine, single engine. I fly in excess of 200 hours a year and have owned five or six airplanes over the years.

I would like you to know that I started flying at 14. I soloed at 16. I had my private at 17, my commercial and instrument by 18 and so forth. So I consider myself very much devoted to general aviation. I also consider myself very much devoted to protecting potential victims' rights.

I think you have heard a lot of information this morning, but I think—and early this afternoon, but I think there is a lot of information you have not heard. And I think that there is more to the story.

Mr. Boyer started by saying that AOPA represents the pilots who are victims who favor H.R. 3087. I don't think that is accurate because the pilot in the general aviation airplane only occupies one seat. And there are usually at least four and sometimes six or more seats. And those are passenger seats. And when we talk about this bill and its effects, we are not just talking about the pilot, or the gentleman from Stevens just said the student who knows there is an inherently dangerous activity and yet comes to you for an immunity type suit—immunity type legislation.

My point is this: The people who are in the airplane and often the people who are injured on the ground will be greatly affected if this bill were passed and enacted. And consideration must be given not to the one seat generally occupied by the pilot, but also to the other seats occupied by people who are usually fairly naive when they get into an airplane.

When I flew here this morning from Michigan, the only comments my various passengers, including my mother, could make is:

"that was a great landing." And that is usually all they know. So I would like you to consider the larger universe here.

There was, and I would like to go into this briefly, there was a question about what product liability law may have done in the way of affecting general aviation. I can tell you because I have been doing this for quite some time now that shoulder harnesses or upper torso restraints are a very good example. The FAA did not require them in airplanes until about 1986. But I would like you to know that the technology and the studies on shoulder harnesses have been available since the 1930s and that product liability suits, I think, can safely be said had a lot to do with the fact that manufacturers started putting upper torso restraints in airplanes long before they were required and now offer kits to put them in airplanes that don't have them, and I think that is just one example.

I could cite others, including seat slip cases where seats, pilot's seats have slipped back, and crashworthiness and I just give those as quick examples.

The point—there was a question that someone else posed sort of to me this morning and it had something to do with what is enough time and when is it enough time and the answer is I think when the product isn't at fault and when the statute of limitations otherwise runs. When the product is safe. That should be the time period, just like every other industry in this very balanced, carefully balanced system of executive and judicial and legislative.

When you propose this type of legislation you are beginning to talk about a legal step up and you are unleveling—unevening the playing field between potential victims and an industry. And it has to be in my opinion approached very, very cautiously. I am sure you are doing that, but I don't think you are hearing both sides. I think you are getting the industry perspective for the most part.

The statement—one of the statements that Mr. Meyer said was that claims just go on and on despite the fact that the operational safety record of general aviation aircraft has achieved new records almost every year for the past 25 years. And I would point out to you that about 25 years ago, product liability became recognized at law as a viable legal remedy and that there very well may be a relationship between the fact that general aviation has gotten safer and product liability claims have been ongoing and I think I cited some earlier.

I think we do have an effect just like the trial bar and the product liability laws of various States and States rights issues are encompassed in there and had an effect on the safety and it has had an effect on various other factors in our day-to-day lives.

I think it is something, frankly, that trial lawyers should be proud of.

Another statement made by Mr. Meyer is that this is a simple piece of legislation which eliminates financial exposure only after the product has proven its integrity. And I would categorically argue that is incorrect and inaccurate. I could suggest the following very brief examples of how this legislation, if enacted, in its present form would be grossly unfair because these airplanes and these problems are known to exist now and the industry or the companies who build the airplanes or parts would get immunity from suits despite the fact that the problems exist.

For instance, the Cessna 411 which was certified, I believe, in 1963 or 1964 and produced for about five or six years in 1965 through 1970 or something like that, is known to run out of rudder control in a single-engine flight situation. It is a twin-engine airplane. You lose an engine and it is not controllable particularly.

Cessna has been sued many, many times on this. The fleet of these airplanes has gotten much smaller because most of them have crashed.

Were you to enact this legislation in its present form, you would simply be handing Cessna immunity for a product defect that it knows exists. It has lost lots of lawsuits. It has settled lots of lawsuits.

The Cessna 210 is another example. It uses bladder fuel tanks. They are rubber tanks that go up in the wings. They have had problems with these tanks for years and the problem is the tanks come lose from their holding clips and they bunch up and water forms in the tank. Just because water forms, frankly, condensation does it, and you can't get the water out because the tank is now scrunched up and has little wrinkles. The approved method for trying to get at the water in a pre-flight phase is to shake the wings and hold the tail down and hope you get it. They have lost lots of airplanes that way. They know it is a problem. They know it today. They knew it yesterday. They have known it for years.

The bladder tanks are still out and they are still the only approved tank for that airplane and they haven't fixed that problem. You would be granting immunity for that problem.

There are others. The Turbo 210 has a vapor lock problem that has been around for years. The V tail Bonanzas; 50 percent of Lear model 23 airplanes have crashed and Lear has been repeatedly and successfully sued for product-related design defects in the Lear 23 series. Fifty percent of those are still out there flying. They lose a couple a year and you would grant immediate immunity for any product claims on those airplanes.

The Malibu was discussed. It had an unprecedented number of crashes. Beechcraft has had a problem with certain flat spin characteristics on one of its airplanes. That is the list.

There was some discussion about magnetos with someone who was up here who represents the manufacturer. What you didn't hear was the magneto was developed as an ignition source for farm tractors in the 1920s. It is a highly outdated technology and it is still out there and you would be granting immunity for any defects.

You have not heard about the profitability of this industry. Cessna is owned by Textron. It was recently sold to Textron, I believe, by General Dynamics for something to the tune of $100 million. Cessna is not a poor struggling little company. Cessna makes jets and turbo prop airplanes and makes a lot of money. And Textron, its recent purchaser, makes engines for single-engine, piston-powered aircraft. I think it is important to understand—I think the selling price, by the way, for Cessna is about $100 million.

I would like you to know that Beech Aircraft recorded the highest dollar sales in 1992. Beech Aircraft is doing very well. It is a subsidiary or wholly owned subsidiary, I am not sure of the status, of Raytheon, and it is a very, very profitable company. And you are talking about giving immunity to these companies for the problems that they may or may know exist that are out there now.

Cessna, for instance, happens to employ about 400 engineers the last time I heard. Cessna, and Beech is an example, transitioned out of single-engine piston airplanes and into corporate jets and turboprop aircraft because it is more profitable. It is more profitable. You make a lot more money selling one copy of a Cessna jet than you do 10 copies of a four-place, single-engine airplane. I think you need to recognize that these are not weak companies.

I would like to talk for a moment about the NTSB because there has been some discussion about that and I would like you to know how an NTSB investigation is done. The NTSB is a very small governmental entity. It is arguably understaffed and when there is a general aviation crash, the NTSB calls the manufacturer and the component manufacturers and they come and participate in the investigation. And I can safely say that in 11 years of litigation I have probably deposed at least 50 or 60 NTSB investigators and in the course of those depositions—I could provide them to you for the record, at least some of them—have established that the manufacturers participated not only in the investigation, but in the writing of the NTSB report. So when you are told information that, well, the NTSB gives us a very, very clean bill of health. That bill of health comes in part with the assistance of the industry itself.

The day after a crash, Cessna usually has an investigator on the site participating in the investigation, signed on, and that is true of the other members of the industry also.

There has been talk about how the FAA regulates this industry, but you should know also that the FAA in its enabling statute is there to promote and regulate this industry and that in itself is a bit of an inherent contradiction. But more importantly, often when the industry wants to certify an airplane, it does so on something called the DOA. That is the delegated option authority.

The FAA delegates the certification procedures to the manufacturer. Sometimes it is a DOA, sometimes it is a DER-designated engineering representative. So that person takes—the person at the industry level is going to certify the airplane. He or she takes off their industry hat, puts on an FAA hat, signs the certification, and then switches back their caps. This is not the level of regulation and insight that you might think and that you might have been led to believe.

I have on many occasions tried lawsuits and do this, quite frankly, as a matter of trial routine and tactic, where I establish for the jury or my partners will establish for the jury that this airplane was not certified by the FAA in the way that it is being suggested. It was certified under regulations that allow the industry broad latitude in self-certification and that is in the regulations.

The insurance requirements strike me quite a bit because this is an industry in which I practice daily. I happen to think personally and I have evolved into this process, this thought, that owners and operators should carry more insurance.

The gentleman from Stevens testified that he is required to, I think, carry $10 million, but I have on many occasions been involved in suits involving death, quadriplegia, burn victims who are not at fault and the FBO or the flight school has a $50,000 or

$100,000 policy. And we do begin to look at that point—because that is not enough to cover these types of claims and injuries, we do begin to look for a design-induced pilot error, some design defect or some other defect. It is our job. We are supposed to do that and we have to do that.

One solution is to promote and require that owners and operators carry adequate insurance. And there are companies out there who do not sell adequate insurance. They undersell. The policies are touted as being a million-dollar policy. It is a $100,000 per seat liability policy and $1 million in property damage and that is how it is promoted and sold. So the buyer may think he is getting a million-dollar policy, but there is a per-seat airplane limitation of $100,000. That has been a continual problem.

I question whether the jobs that are being suggested would be—would flow from this legislation if enacted, would, in fact, occur and one possible thought is a sunset provision if it doesn't. This is sweeping legislation and there are some safeguards that if you are seriously considering this legislation you might also consider giving careful thought to.

The point that I am really trying to make is that when you start enacting legislation that works for the benefit of a small industry and general aviation, frankly, is a small industry and it always has been overall in the bigger scheme, when you start enacting this type of legislation, you are taking the playing field and making it somewhat uneven between the claimants and the industry.

I am not concerned, frankly, that much about a lot of frivolous lawsuits. I am concerned about the loss of legitimate lawsuits. The legal system does have provisions for frivolous lawsuits. I think the gentleman up here testified that his company had been sued 35 times and that two of those suits were frivolous or didn't get settled or they didn't pay on, but they found some basis for settling the other 33 of them.

The 15-year period, frankly, is an arbitrary cut off from what I can tell and I think everyone pretty much agrees with that. It has a very serious unfair effect. There is no provision for concealment. And it does happen, I would suggest to you, and I think I could support that statement. There is no showing that it actually will solve the problem and there is, frankly, no real showing that product liability is the problem per se. And it is somewhat Draconian; it is frankly somewhat odious.

This has been touted as a pared—I am almost finished—this has been touted as a pared down attempt for legislation with regard to the prior bills that have come through. I pulled the report from the General Aviation Accident Liability Standards Act of 1989 from the Senate Judiciary Committee. The section of the report that related to it was Section 7 that related to the proposed statute of repose in that—and this is what came out of that Senate report and I just want to read it to you briefly. It is one paragraph:

> Section seven of S. 640 is arguably the most offensive part of this legislation. This section establishes a general 20-year statute of repose for actions which might be brought under this bill. Under the terms of this bill, generally no one could recover for harm arising from an accident involving a general aviation aircraft that is over 20 years old. It is important to note that the average age of general aviation aircraft in this country is approximately 23 years. If this bill were adopted, Congress would be exempting over half the aircraft in the country from potential recovery. As a re-

sult, general aviation manufacturers would be receiving a windfall at the consuming public's expense. Although some States have established some statutes of repose, for Congress to impose such strict barriers to recovery would not be in the best interests of this Nation.

I think and urge that you consider very carefully the step you are being urged to take because I suggest to you that there is a much broader panorama than just the industry presentations this morning. Thank you.

Mr. OBERSTAR. Thank you for a very important viewpoint. You are not here in official designation, but in fact you are a stand-in for the group that we invited and chose not to appear for whatever reason. You say when you are hearing only one side it is the side that the Trial Lawyers Association chose not to represent. That is the third time running they have chose not to represent it and maybe that is because they think they can bottle it up in another committee. But that still doesn't excuse their failure to appear before the committee and make the points and perhaps in greater detail that you have been making.

You said and I am not quite sure how you intended to bring it up, aviation is an inherently dangerous activity.

Mr. KATZMAN. I was quoting the gentleman from Stevens Beech who said it was an inherently dangerous activity. What struck me when he said—I heard him say it a few minutes ago. What struck me is if this is an inherently dangerous activity, should immunity be granted from suit?

Mr. OBERSTAR. Yes. What is your view on that?

Mr. KATZMAN. I don't think that it rises—it does under legal standards in Florida, for instance, it is considered an inherently dangerous activity. That is true. Some States do view aviation that way. Just without looking at a statistic, I would tell that you general aviation is not particularly the safest way to go. Many members, unfortunately, of this esteemed institution have died or been injured in general aviation accidents over the years. I know in the last six years I believe at least two or three have been killed that way.

I wouldn't call general aviation the safest method of transportation. I think it is something that you have to strive mightily to make safe. But I also think that because of that you don't want to impede any aspect by restrictive legislation.

Mr. OBERSTAR. Well, I was just wondering what conclusion—legal conclusion you draw from that statement, I don't want to belabor the point, but certainly tens of thousands more people a year are killed on the highways than in aviation accidents and we spend hundreds of millions of public dollars every year to make highways safe and safer and we don't spend public dollars on making aviation safer except in air traffic control which comes out of a tax for that purpose. That is not of great significance.

You referred to your deposing of NTSB investigators and the use of designated engineer representatives. I guess I have spent with Mr. Clinger probably 10 years or so of inquiry into NTSB and FAA and safety and minimum equipment lists and the aging aircraft issue so I would say we know a fair amount about how the NTSB operates and about how the FAA internal investigation unit operates and the GAO inquiries that we have directed that have revealed a great deal and made a significant difference in the way FAA operates and the industry operates. And it is common for industry to have someone at the scene of an accident.

Boeing always has a representative. Douglas always has a representative and quite frequently both Douglas and Boeing have industry structural engineers present at accidents involving aircraft other than those they produce. That is not an uncommon factor. It is encouraged by both FAA and the NTSB. They all learn a great deal from having the industry representatives there, so I don't consider that of any great consequence.

But you do suggest that in your testimony that there should be an exception to this statute of repose for cases where evidence of a defect is hidden by a manufacturer.

First, are you aware of any case and case law where there was a case that was settled on the very point of the manufacturer having hidden a defect or knowing of a defect and having been judged thereupon? And secondly, what language would you suggest that we incorporate to make that?

Mr. KATZMAN. Dollars to donuts, you are much better than I at that. I have never written legislation. I can suggest honestly concepts or ideas better than I can language at this point.

Mr. OBERSTAR. I am not asking you to address specific legislative language. I do want to know if there are cases that would be addressed by such language.

Mr. KATZMAN. I think there are and I can probably point to a few. I have mentioned some. You have two contexts. One is the concealment issue and the other is prior knowledge. Let's take prior knowledge first. It is the easier one, frankly. It is easier to find and it is easier to prove.

Prior knowledge would be if Cessna is still putting—if Cessna today has knowledge of bladder tanks in its fuel systems, use of bladder tanks in the fuel system that accumulate water and cause engine stoppage. That is prior knowledge. If those tanks are out there and they know about them today and they haven't solved the problem, that is prior knowledge.

Mr. OBERSTAR. But supposing there is an obligation in this case that pilots do know about the tanks and they are supposed to drain them after a rainstorm and they don't do it?

Mr. KATZMAN. They can't do it. You think you have done it, but the water is hiding in the tank. The water hides behind the crevices and even though you are getting clean, good fuel, there is water in the tank that is hiding. That has been the basis of these claims.

I would like you to understand that winning a product liability aviation suit is not an easy endeavor. There may be some frivolous suits out there. I don't doubt that there are, as in the judicial system permeated by that level, but there is a higher level and there are legitimate cases and winning one of these cases you literally, as a plaintiff's lawyer go up against an industry who throws it back at you with a lot of money and a lot of effort.

They usually have very good experts. They do everything they can to protect the integrity of their product. It is not an easy endeavor. We don't just file these suits, remember, we generally work for a percentage of fees. We have no incentive to file a case we don't think legitimately we can win.

Mr. OBERSTAR. Thank you, Mr. Katzman.

Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

You indicated there was no credible evidence from anybody, and I think I would agree, that the precipitous decline in the general aviation industry in this country is attributable to the fact of product liability.

Mr. KATZMAN. Per se.

Mr. CLINGER. But do you have any credible evidence that something else is the cause of this? We have seen this happen and it seems to have gone over the period of time that you mentioned we have recognized product liability as a cause of action.

Mr. KATZMAN. I think I could suggest several factors and my understanding of the testimony, by the way, is that nobody suggested that product liability is the sole factor. I haven't—I have heard a few people suggest that, but for the most part, I don't think that has been the thrust of the testimony here today.

I would suggest that other factors would include, one, airplanes are made the same way today that they were made 50 years ago. They are made of aluminum. It is hand-shaped essentially on jigs. It is a semiskilled and it is a very expensive process to build an airplane. It is not an economical process and general aviation airplanes tend to be—have to be much cheaper than, say, corporate jets or turbo props so the pure economics of building one of these airplanes and the amount of money you can take out of it doesn't necessarily make it a very profitable venture unless you can build a lot of them.

And I would point out to you that there are only 200,000. We heard that this morning or this afternoon. Two hundred thousand general aviation aircraft. That is not a big market nationwide. If you doubled that market, you wouldn't have a tremendously large grouping. It is just not that economically feasible, per se.

Mr. CLINGER. What about this issue we talked about earlier today about the Piper case where the court held that this was—the Federal law had not preempted the State. Aren't we subjecting these people to incredible variance and divergence of standards of negligence throughout the country. Shouldn't there be a preemption hearing that we should be dealing with a Federal standard on this level.

Mr. KATZMAN. It is probably the largest and most interesting area of law right now in this field whether or not there should be—you are dealing with States' rights versus Federal preemption. It is an issue——

Mr. CLINGER. What is your view?

Mr. KATZMAN. My view is from Magna Carta on, and once the Union was established, States' rights have done a pretty good job of protecting the interests of the citizens of a given State and that as a general rule, while I might suggest that some jurors individually may not have the greatest of wisdom, collectively they tend to have some wisdom. And I think that the State judicial system and the Federal judicial system have done a pretty good job overall, despite a lot of bashing.

Mr. CLINGER. So you don't think it would subject the manufacturers to impossible situations?

Mr. KATZMAN. I don't think they are subjected to that impossible a situation, no.

Mr. CLINGER. Okay. Let me ask one final question, that is, as has been pointed out here, that the—well, a lot of these suits arise because of the failure of a part or an avionics or whatever it might be and those are probably going to still be very likely the subject of suits because oftentimes they were replaced before the 15 years arises.

Aren't we talking about sort of—aren't you saying that this is going to be more restrictive than it really is going to be in terms of the ability to bring suit?

Mr. KATZMAN. I think that major components, some are replaced and some aren't, but the examples I used earlier, for instance, the fuel tanks, there are dozens of airplanes out there flying today with bladder fuel tanks.

Mr. CLINGER. Why haven't they been replaced?

Mr. KATZMAN. They haven't come up to the point where they are leaking so they have to be replaced.

Mr. CLINGER. They have lost some lawsuits because of them?

Mr. KATZMAN. They have lost lots of them because of them.

Mr. CLINGER. I don't understand why that is the case, if they are losing lawsuits, if they can figure out a way to do it better.

Mr. KATZMAN. You will have to pose the question. All I do is go out and if I see a problem, if I have a legitimate suit, I hope to bring it.

Mr. CLINGER. It seems that kind of standard of product liability doesn't really work, if you see the objective of the product liability is to see the products improve and safety measures adopted because of that. And here we have apparently something that has been causing the effects for a long period of time and it has not had the desired effect.

Mr. KATZMAN. I think it works for the victims if they win the lawsuit.

Mr. CLINGER. It doesn't help for the future victims.

Mr. KATZMAN. That is something that goes back to whether the industry is really as heavily regulated as might be suggested. I don't think it is.

Mr. CLINGER. Okay. Thank you.

Mr. OBERSTAR. I think on that point, though, that the coordination between NTSB and the FAA and the FAA and manufacturers requiring service directives and structural changes addresses those major issues that require change.

At any rate, we thank you very, very much Mr. Katzman for your presentation. Mr. Katzman, it has been very helpful. The subcommittee will take a brief recess for this recorded vote.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting and invite our two remaining witnesses, Mr. William Leavens, President of Mid-Atlantic Aviation Coalition; and Jack McNamara, on behalf of New Jersey Aviation Advisory Council.

Do we have only one?

Mr. LEAVENS. Mr. McNamara is currently before the NTSB in a hearing. He has been notified, and so I will soldier on without him.

Mr. OBERSTAR. We are glad to have you. Thank you very much.

TESTIMONY OF WILLIAM B. LEAVENS III, PRESIDENT, MID-ATLANTIC AVIATION COALITION; AND JACK McNAMARA, ON BEHALF OF NEW JERSEY AVIATION ADVISORY COUNCIL

Mr. LEAVENS. Mr. Chairman, I am Bill Leavens. I am a pilot and an economist. I am here to represent the 1500 members of Mid-Atlantic Aviation Coalition.

Our membership is mainly comprised of general aviation enthusiasts who belong to our constituent organizations. The coalition has a primary interest in seeing this resolution enacted into law. We thank you for the opportunity to present testimony in this case.

I note that in less than two months we will be celebrating the 90th anniversary of powered flight. General aviation in the United States is dying and it is dying from one sole cause. The companies that manufacture small aircraft cannot build and sell their products at a price that people can afford.

The principal reason for this, we see, is that the purchase price of new general aviation aircraft is inflated by excessive costs of product liability insurance that manufacturers must have to protect themselves.

From personal experience, this artificially high cost affects my choices and opportunities as a pilot, prospective new aircraft purchaser, and a qualified user of the Nation's airspace system.

I currently own an older "Spam can", as it were, a Cessna, model 140–A, which I dearly love. I purchased it seven years ago. It is a perfectly good aircraft. It serves most of my purposes. It does almost everything I need, but some day I would like to replace it with an aircraft with greater capabilities. Presently that is not possible. My airplane sold in 1950 for a little more than $3,000. It cost me $9,000 to purchase in 1986.

If I were to buy a new factory-built aircraft with the same capability today, the purchase price would approach $100,000. The manufacturer, Cessna, as you have heard, has not built a similar basic aircraft since 1986. Cessna cannot afford to take the risk of liability exposure and potential customers cannot afford to pay Cessna the premium expense of product liability insurance. Consequently, all of the company's entry-level aircraft have been withdrawn from the market. This limits consumer opportunity and competition.

The high cost of product liability insurance affects older companies with 50 or 60 years of manufacturing history more than new entrants into the field. Cessna is still on the hook for my 43-year old airplane. Cessna, Piper, and Beech have been building aircraft since before World War II. Those companies, their heirs and assigns, must carry the financial burden of a liability tail that is half a century long. They will carry it until their financial resources are exhausted or they cease operations. And that is happening.

The cost of product liability insurance premiums and excessive damage awards paid to people who crash all of those obsolete aircraft gets passed right on to anybody who purchases a new airplane from the same manufacturer. The answer, of course, is to put a finite limit of 15 years on the amount of time that a manufacture is liable or responsible for warranting the safety of their product.

There has been some technical progress since my aircraft was built, certainly. Yet manufacturers are penalized for introducing new improvements and new designs. Plaintiffs attorneys have successfully argued that an older design was faulty or why would it have been replaced? The very thought kills creativity, ignores advances in materials science, and engineering, and prevents the introduction of new products to enrich our lives.

Another part of that cost-to-build equation can be attributed to manufacturing economies of scale or, in this case, dis-economies. In general, if a manufacturer can produce and sell more airplanes, or virtually any other good, there will be a decrease in the per unit cost of manufacturing. That is Economics 101. Any artificial cost increase will affect demand for a product to some extent.

The example of declining aircraft sales over the past two decades is a dramatic illustration of how great that effect can be. You have seen the statistics. Product liable costs have thoroughly skewed the marketplace.

However, product liability costs are not borne only by aircraft manufacturers but also by the hundreds of suppliers who make components which are used to make aircraft. Product liability costs are cumulative. They are summed over an entire aviation industry. The resulting high artificial cost for aviation components is a barrier to entry discouraging new companies from entering production.

That further limits my consumer opportunities and further limits competition in the industry.

Parenthetically, as you have heard, all of those aircraft and the components that go into making them are designed and manufactured to meet standards and regulations established by the Federal Aviation Administration. By granting an airworthiness certificate, the government essentially approves the demonstrated safety of an aircraft.

If the Federal Government says that an aircraft passes tests to meet the standards, why is a manufacturer liable in any product fault question? The person that buys a new aircraft winds up paying the manufacturers's costs for designing to government standards and testing to meet those government regulations. Why is the government in the aircraft approval business if not to provide some measure of protection to the manufacturers too?

One issue which H.R. 3087 does not address, and I would like to see it address, is the system of punitive damage awards to litigants in a product liability case. A jury that determines that a manufacturer's product is harmful can award an additional amount of compensation to the plaintiff.

Punitive damages are awarded to "teach somebody a lesson", by imposing a financial penalty that is greater than the damage suffered by an aggrieved party. That punishment is levied to discourage behavior which imperils society, to penalize the antisocial act of making an unsafe product. The concept of punitive damage awards is good. Brigand manufacturers of bad products should be discouraged.

Yet the plaintiff is only one of a whole class of people who may use a faulty product and who are potentially subject to its harmful effects. A manufactured aircraft was built for a larger population than just one plaintiff. Any damage award should be paid to an organization, government agency, or other entity that represents or looks after the welfare of that entire class of product users.

In the case of punitive damage awards against aviation manufacturers, there are logical award recipients in public foundations or government organizations like NASA and the FAA that work in order to improve flight safety. Bad behavior on the part of manufacturers would still be punished and discouraged. The present system serves only to transfer vast wealth to product liability lawyers. It does absolutely nothing to improve aircraft safety.

Unnecessary excessive legal fees and insurance premiums are being sucked right out of the most creative and productive parts of our economic system. Unless the product liability pendulum starts to swing the other way, we are dead as a manufacturing society.

You Members of Congress have the unique ability to reverse that pendulum swing. We have to confront the fact that our current product liability laws are ruining our industrial base. That doesn't affect just aircraft manufacturing, but it cuts across the board to virtually every product category and a great number of services like health care.

At one time, general aviation export sales contributed significantly toward our balance of trade. A proud industry has been gutted by a legal system driven by greed, fear, and ignorance, not by compassion for those truly wronged.

Orville and Wilbur Wright were not working for the military or commercial interests. They were inventing personal aviation. They wanted to fly, and their dream is exactly what we are talking about today. This proposed legislation will go a long way toward correcting some of the basic injustice to personal aviation that has been built into our product tort system. It is imperative that this legislation be enacted into law if we are to celebrate 100 years of flight.

Thank you.

Mr. OBERSTAR. Thank you very much, Mr. Leavens. Obviously, you are very committed to aviation and you have a very deep affection and your testimony is delivered in a very heartfelt fashion; and I appreciate that.

Mr. LEAVENS. Thank you, sir.

Mr. OBERSTAR. If this legislation is enacted and the manufacturers do not have to include in the cost of the aircraft this huge liability that they are facing now—that is running in excess of $250 million a year in costs, legal fees, and judgments—what do you think will be the effect upon price of new aircraft?

I raise that because your testimony said that you bought, for roughly $9,000, an aircraft that originally was $3,200 and if manufactured today would be $100,000 because the manufacturer would have to include the cost of product liability in it.

What do you think is going to be the marketplace effect of this legislation for your colleagues, your associates, who are keen on personal aviation?

Mr. LEAVENS. I see this as part of a larger whole. There are a number of things that have to be fixed. I touched on that with punitive damage awards. There are a number of other factors like joint and several liability for manufacturers.

But taken as a whole, yes, there still will be premiums for product liability insurance. There is no question about that. But anything that is going to encourage competition and encourage other manufacturers to enter is good. And if the products that go into an aircraft, the components, are reduced in price by a reduction in the product liability component of their manufacturing cost, that will encourage small manufacturers.

The other thing is, as Mr. Meyer indicated, Cessna will go into production. It has been reported. He is ready to build 2,000 aircraft a year within a couple of years after this legislation is enacted.

The fact that there are more aircraft there, the larger the quantity, if demand is there, the lower the price.

Mr. OBERSTAR. And the question though is how low is it going to be? What is the market? How many $100,000 aircraft can you afford?

Mr. LEAVENS. If it is a $100,000 aircraft? But if you have a number of manufacturers that come in at $45,000 per aircraft (I don't know what the multipliers are from 1950, but do it times 10), you would come up with a $30,000 to $35,000 airplane comparable to what I have, which is a simple two-seat trainer aircraft.

If that can be emulated, if that type of aircraft can be put back into production at a $35,000 or $45,000 price range, that sets a base. And if Cessna chooses to build at that price, that is all well and good. It will encourage other manufacturers to do it.

Mr. OBERSTAR. At $35,000 or $40,000, you think that is an affordable range for people today?

Mr. LEAVENS. Yes. Look at it as a middle level to luxury car prices. Again, I think you can go back to the 1950's where aircraft pricing was equivalent to modest level luxury cars. There is a market in that price.

I have talked to a number of people that the main reason they are not learning to fly is that they can't afford the aircraft. Aircraft are expensive to rent. And from my standpoint, the user standpoint, it is expensive. If I didn't have a $9,000 airplane to fly, if I had to buy a $45,000 or $90,000 aircraft, I probably would not fly. It is that simple.

Mr. OBERSTAR. You looked at this issue for some time now. Why do you think the numbers have jumped so dramatically from the mid-1970s when it was in the range of $24 million a year in liability costs to 10 times that today?

What has happened in the last 15, 20 years?

Mr. LEAVENS. You would have to ask the industry. I am not a spokesman for the industry, nor can I understand what has been going on in damage awards.

But certainly insurance companies have a right to protect their interests. They cannot make huge damage awards without collecting huge amounts of income, premium income to cover themselves. They can reinsure it to a certain extent, but at one point they can't pay out more than they are taking in. It seems that simple.

Mr. OBERSTAR. Have trial lawyers, most recently, found a new field of endeavor in the aviation liability cases?

Mr. LEAVENS. No. It has been going on for quite some time. And I think what has happened is that any insurer can see a trend in the damage awards. They base their premiums, I am certain, on formula of what they anticipate paying out. And that is what they charge manufacturers premiums for, the anticipated loss.

Mr. OBERSTAR. Thank you.

Mr. Clinger.

Mr. CLINGER. Thank you very much for your testimony. And Mr. Katzman indicated in his testimony that this was necessary—the present system was necessary, because it was contributing to aviation safety. And he talked about the shoulder harness and so forth.

Have you suggested that you don't feel that this procedure has played any role in aviation safety?

Mr. LEAVENS. No, I don't. Well, I do to some limited extent; but when I took delivery of my aircraft, there was no factory approved procedure or method for installing seat shoulder harnesses in my aircraft. I did it illegally. I think consumers are smart. And I think consumers have an awful lot to do with this equation.

And one of the things that Mr. Katzman's testimony glossed over; if half of a certain design aircraft have fallen out of the skies, don't you think that consumers know about it and would avoid that thing like the plague?

And again, it is the marketplace at work. If people know that a certain aircraft design is faulty, either they take steps to get it fixed (in the case of the V-tailed Bonanzas, putting a doubler in the tail end of the aircraft to strengthen against the gust loads that cause it to fail) and in the case of the Cessna, making sure that the engines are powerful enough to keep the thing in the air if one engine goes out.

Consumers have a lot to say about what they are going to be buying and flying. We are not totally stupid about the product.

Mr. CLINGER. There was testimony today about the early Lear Jet, half of which have apparently crashed and they suggest the other half would crash sooner or later.

Who is flying those?

Mr. LEAVENS. Who flies them are primarily operators who haul mail and haul canceled checks. They are operating generally at 2 or 3 o'clock in the morning, and pilots are tired and the aircraft are old. These things are getting on in years because they have been in commercial service with maybe limited maintenance support.

Mr. CLINGER. So it is not necessarily design failures?

Mr. LEAVENS. It may be a design failure. I don't want to fly one, thank you. That is a choice that I would make as a consumer.

Mr. CLINGER. The suggestion—the one thing I am sure I follow you on is to suggest that because the plane is certified and receives an airworthiness certificate from the FAA that that should somehow make you immune from suit.

Are you suggesting that we go that far?

Mr. LEAVENS. The principal argument there is that the government has approved testing procedures which the aircraft has passed. And, again, I would ask a larger question: Why is the government in a design business if not to set standards; and if those standards are met, is the manufacturer not absolved of some liability in this case; the fact that it has been tested to meet commonly accepted and quantifiable standards?

It seems common sense. I am sorry if I can't make it any more clear than that.

Mr. CLINGER. But the manufacturer would still be liable for a defective part?

Mr. LEAVENS. Yes. If a part does not meet a specification as designed and tested, if they switch parts after testing, then certainly there is fraud involved. That is a whole other issue. I don't think that is the case.

One of the points that Mr. Katzman made—he made the statement that manufacturers do everything they can to preserve the integrity of their products. And I think, by and large, that is true. I am continually impressed by the integrity of people that I run into in aviation in general, and as far the manufacturers, same thing.

You don't put yourself up 5,000 or 10,000 feet in the air without having an awful lot of faith in the product that you are doing it in. I think the manufacturers know their market. And I think they know exactly what they are doing for the most part.

As a consumer, I am inclined to give them the benefit of the doubt. I don't think these are evil men creating bad products. I don't think that is the case, no matter how much that may be some part of the public perception that has been created.

Mr. CLINGER. Thank you very much.

Mr. LEAVENS. Thank you, sir.

Mr. OBERSTAR. Why do you think aviation has come in for such a heavy hit on product liability?

Mr. LEAVENS. Easy. Because airplanes last a long, long time. There is a terrific amount of exposure because the products have been out there for so long. Mine has been there since 1950, generating a liability for Cessna for 43 years.

Since it left Cessna's doors, it has never been back. It has been maintained once a year by a qualified mechanic. But Cessna hasn't had anything to do with the continuing maintenance of that aircraft. That is up to me, as a pilot, to ensure that the aircraft is safe. And that is one thing that we all forget about this, that the pilot in command is responsible for the condition of his aircraft.

The other thing is that when aircraft crash, they generally cause a lot of injury and death. The nature of an aircraft accident is a high speed impact. You don't survive that. If you do survive, there is a good likelihood that you will be injured. I fly under visual rules. I don't fly more than 110 miles per hour. The stall speed of my aircraft is about 35. I can literally walk away from almost any stupidity that I get myself into. And it would be my own stupidity, either for failing to ensure that the aircraft is in good operating condition, for flying in wind or weather conditions that are outside of my capability, or if something just breaks—and I recognize that may happen—I am capable of landing the thing in a controlled situation.

Mr. OBERSTAR. Knowing your limitations and flying within them and practicing all the safe procedures that one must. You certainly had some cases cited of just egregious mistakes on the part of the pilot and yet damages were awarded.

Mr. LEAVENS. You can't legislate intelligence, unfortunately. If you could, we would all be smart.

Mr. OBERSTAR. Mr. Ewing?

Mr. EWING. Opponents of this bill believe that a tough products liability system is one of the prime incentives for manufacturers to build safe planes.

Would you agree with that?

Mr. LEAVENS. You say "opponents"?

Mr. EWING. Opponents of the bill believe that a tough product liability system——

Mr. LEAVENS. To the contrary. What it has done is it has eliminated an entire industry. Right now, manufacturers have no incentive to do anything. Less than 500 single engine piston aircraft were produced last year, which is what I am concerned about. The kind of aircraft that people fly. People don't fly Lear Jets. Companies fly Lear Jets. But people fly two- and four-place aircraft. That market no longer exists because that industry practically does not exist.

Mr. EWING. So you don't disagree with that at all?

Mr. LEAVENS. Well, it is sort of a tautology. I have the utmost respect for the manufacturers.

Mr. EWING. What would your idea be of a perfect aircraft liability bill?

Mr. LEAVENS. It would include some component of punitive damages for sure, and it would probably include some measure to eliminate joint and several liabilities, which is where the deep pockets pays everybody's legal bill.

I would also have something which would include a component where the loser would pay the winner's legal bills. In that case, a genuine defect would indeed be discovered and would be the basis of a successful claim, as it should be.

There is no question in my mind again that bad products should be removed from the marketplace. But in many cases, the aircraft is not at fault in these damage awards that are assessed. Or they are just so large that only one set of pockets can pay them.

Mr. EWING. Thank you.

Mr. OBERSTAR. Our other witness has arrived, and we will take Mr. McNamara's testimony at this time.

Mr. MCNAMARA. Good afternoon, Mr. Chairman. I have a prepared comments; and if you will permit, that I will just make them.

Mr. OBERSTAR. They will appear in full in the record, and you may read it as such or summarize it, as you wish.

Mr. MCNAMARA. I will make the comments, because I have taken the liberty of making some changes to them.

Of course, my name is Jack McNamara and I represent the New Jersey Aviation Advisory Council, which is a council of 32 aviation experts which are selected by our commissioner of our Department of Transportation, to serve as advisors directly to him on all aspects of aviation in our State.

You may not remember it, but New Jersey has long been a State which thrives on aviation manufacturing. The Foker Tri Motor, which carried Admiral Byrd historically over the North Pole, was manufactured at Teterboro. The Wright Patterson engine which powered the Spirit of St. Louis to Paris was manufactured in Patterson. Curtiss Wright located its facilities at Caldwell and General Motors manufactured the Thunderbolt at Linden.

Today, still, New Jersey is home to over 400 aviation businesses. Many of them are suffering, as is New Jersey's status, as an aviation employer because financial resources which otherwise would finance growth must be committed to product liability insurance premiums and litigation expenses. These, in turn, must be covered by price increases which have reduced demand and reduced sales revenues.

My own area of expertise is aviation law. And in that capacity, I am fully familiar with the effect of product liability litigation upon our State's aviation manufacturers. You know that it serves no purpose to address these at the State level because long-arm jurisdiction will drag our States' manufacturers into the courts of every State in the Nation. Only you in the Congress can give effective relief.

We have counseled our commissioner of transportation that one key to economic recovery for our Nation and certainly for our depressed State is to bring product liability litigation under control. The council views this 15-year statute of repose as a start at doing that.

This House has had aviation product liability legislation before it for more than a decade. So far, we have not accomplished anything. Aviation businesses in New Jersey and across the Nation continue to suffer devastating verdicts arising from accidents involving aircraft designed and manufactured decades ago.

Yet we all know that American aircraft are not negligently designed nor carelessly manufactured. America's brightest and most competent engineers work for our aircraft manufacturers. The design and manufacture of all aircraft are approved, certified, and rigorously regulated by the Federal Aviation Administration which requires extensive testing for each new aircraft or part design.

Our American legal system provides a force of litigators ready to pounce at the slightest hint of carelessness and wreak devastating results. Verdicts have been $27 million for a seat that slips and $100 million verdict for an engine that failed. That verdict was subsequently overturned, but it was a verdict. And it is a very dramatic verdict. If these accidents and injuries emanated from automobile accidents, the results would have averaged 96 percent less. Taken all together, this process has begotten the most carefully manufactured products in the world.

We believe it is unjust to hold these same aircraft manufacturers liable for defects in designs which are more than 15 years old. Because of the fantastic progress we make in America in technology from year to year, the trials of these accidents insidiously but inevitably become tests of yesterday's old aircraft designs against today's brand-new technology. And that is patently unfair.

The manufacturers have warned us what would happen if they couldn't get a fair deal in the marketplace. They warned us that they would have to drop out of the market. They could not—and they did. And what they did in Wichita and in Vero Beach in the general aviation manufacturer areas was suffered in Teterboro and Caldwell and all across the Nation.

Our council believes that what is worst still is the effect of this on our young people. New Jersey was once a leader in aviation education. Today our flight schools cannot find affordable training aircraft. There is no longer a single engine training aircraft manufactured in the United States. We used to be the only Nation in the world that made them. Students cannot afford the increased costs that have arisen with the purchase of foreign aircraft, and flight training programs can't survive. We have lost one major college-level program in aerospace at Princeton University already and have only two technical aviation schools in New Jersey.

As we lose these once viable aviation education programs, our aviation technology dwindles. In turn, we lose our country's leadership as an aviation manufacturer. We see evidence of this already.

America's great aircraft operators are now placing orders for European Consortium Airbuses, Swedish regional carrier aircraft, French, German, and Italian helicopters, and even French-Italian consortium light single engine aircraft. This would have been inconceivable in 1970 when our flight training and aerospace programs were strong.

We are concerned most of all with encouraging an aeronautical education base. New Jersey, which has developed and graduated at least five generations of pilots, mechanics, and engineers, now suffers the wholesale destruction of its aviation industry as it once knew it. With it has gone the infrastructure and the impetus of our aviation educational system.

Our students have unhappily reviewed our unemployment statistics and noted with growing distress the out-of-work aircraft workers. They know we face the loss of more aviation jobs as airports close and defense contracts are cut back. No one can wonder that they are not encouraged by this.

Simply put, what we support is a viable general aviation fleet filling our skies again. We want young people to learn aviation skills and go on to lucrative aviation jobs again. We want to put our unemployed aircraft worker back on the payroll again. We want a fair shot to compete in the aviation industry, and we want to reclaim our role as the world's leader in manufacturing high-quality aviation products.

This bill, which we are considering today, once passed will help. We urge you and your colleagues in the House to give this bill your ardent support. For that, you will have earned our gratitude and helped the economic recovery, which we so badly need.

New Jersey's Aviation Advisory Council wants to thank the subcommittee for this opportunity to address it. If you have any questions, I will be happy to answer them.

Mr. OBERSTAR. Thank you.

One of the arguments made by the opposition to this legislation is that the role of product liability has been greatly overstated in the decline of the industry, that the economy in recession, high interest rates, over a long period of time, overproduction of aircraft, saturation of the marketplace, and from time to time, high cost of fuel, are factors that have driven consumers out of this market and that product liability is just one of several and not the dominant factor.

That is what the opposition says. And I would like to hear your response to it.

Mr. MCNAMARA. Congressman, I think you will have to address that question to the manufacturers of the aircraft. They, more than anyone, should know why they have discontinued manufacturing them. What they have told us is that it is liability insurance premiums.

I remember attending a session of the Lawyer Pilots Bar Association early in 1980; and at that time, I was told that even for a Cessna 150, which is a two-place training aircraft, the product liability insurance premium was $70,000. I was shocked at that time.

I was more shocked three or four years later at a similar meeting when I was told it was now up to $90,000. And it is impossible to have aircraft that are going to have a market, when the price of the aircraft—when the aircraft is overpriced simply because of its liability insurance premiums. These are aircraft that should be selling for 40 our $50,000.

Mr. OBERSTAR. Well, the advocates for the trial lawyers would say that the product liability case law keeps manufacturers honest, puts pressure on them to improve their product, to correct defects, to announce to the public and to the FAA and to the National Transportation Safety Board inherent defects that they are aware of and serves as a brake on those, restraining those manufacturers from not correcting defects when they know of them.

Is product liability exposure a valid argument for safety?

Mr. MCNAMARA. Mr. Congressman, we are not discussing today eliminating of the life blood of the American trial lawyers entirely. We are only talking about taking away that part of it that attacks aircraft designs that are more than 15 years old.

If you bought an aircraft today, sir, and it went out and failed in flight because of a design defect, the American Trial Lawyers would have every right—and I wouldn't disagree with that—to bring that lawsuit and recover what verdict or judgment they could.

But what we are talking about today is totally different. We are talking about designing an aircraft that goes accident-free for 15 years, that we use today's technology in a careful manner, a careful—not a negligent or careless manner, and that technology suffices to go accident-free for 15 years. And now an accident happens. What we are saying today is to design it that well is good enough.

Mr. OBERSTAR. Mr. Ewing.

Mr. EWING. Thank you, Mr. Chairman.

What manufacturers of small planes for individuals are left in this country? Do you know?

Mr. MCNAMARA. Well, of course, Cessna is out of the business at this time. What we would consider small aircraft—Congressman it depends how you define "small aircraft." If you are using the FAA definition of under 12,500 pounds, you really are above the level of small aircraft that I am talking about. If you are talking about training aircraft and aircraft that are 7,000 pounds and under, the Cessna is virtually out of that business. They don't make any reciprocating engine aircraft.

Piper is bankrupt and still manufacturing, in bankruptcy, its Malibu.

The Beech Aircraft Company is still manufacturing, but on a very reduced level of production, its Baron, as far as I know. And there are some boutique aircraft that are being manufactured on a very small scale. Really the only aircraft manufacturer that is showing increased sale in reciprocating engine aircraft is Frank, out in California that manufacturers the helicopter, Frank Robinson that manufactures the Robinson helicopter.

Mr. EWING. So there has been a tremendous decline in the manufacturers of small aircraft?

Mr. MCNAMARA. Enormous decline. And many of these companies, such as Cessna that were once manufacturers of enormous quantities of aircraft—I believe in 1978 total sales were about 18,000 units a year—these companies, Cessna in particular, has absolutely cut out its manufacture.

I used to represent a Cessna service center in New Jersey. Cessna had a tri-level system of marketing their aircraft. They had service centers, and they had training centers. And they had distributors.

All of these things are gone.

Mr. EWING. The point I want to make or we would like to try to get the answer is where are these planes being manufactured today?

Mr. MCNAMARA. Today if you were going out to buy a single-engine aircraft, your choice would be to buy a—one of two models of European—a French, Italian consortium. Aerospatiale or Trinidad or Tobago. You couldn't buy anything from Cessna.

Mr. EWING. Are these planes being manufactured, though? I mean have these—there are still a large number of new planes being manufactured somewhere in the world market?

Mr. MCNAMARA. Yes. There are—not a large number, no, but there are air—there are light under 7,000-pound aircraft still being manufactured. Not a large number.

Mr. EWING. Have other countries experienced the same loss of manufacturers that we have?

Mr. MCNAMARA. No. In other countries, aircraft manufacture is growing. They are replacing. They are taking the market that we have given up. So we have litigated our manufacturers out of this area.

Mr. EWING. Someone who wanted to buy one small plane would probably go and buy a plane made outside the United States?

Mr. MCNAMARA. That would be—that would be one of the choices, yes.

Mr. LEAVENS. Congressman, if I may. It is my fear that should this bill, or something very close to it, be not adopted, we are going to essentially export our aircraft manufacturing business to the former Soviet Union countries. The Russians, the Ukrainians, the Poles, the Czechs have designs which are older designs. They have the technology to build these aircraft. They have the need for foreign exchange to export these aircraft and they do not have the same product liability situation that American manufacturers do.

I would speculate that within five years whether the bill is passed or not they are going to be viable competitors just because of economic conditions. That is the way things work. If the bill is not passed, they will be dominant manufacturers.

Mr. EWING. Well, one further question, I guess. If we went to a Russian manufacturer or a French or an Italian manufacturer, and there was an accident, they are not subject to the same product liability laws that an American manufacturer would be.

Mr. LEAVENS. The importer might, but the importer might be nothing more than a shed, a leased shed.

Mr. EWING. You can't get to the deep pockets.

Mr. LEAVENS. There are no deep pockets and you can't get to the foreign national governments. If they are owned by the foreign governments which in some cases, I think Aerospatiale is and a lot of the Eastern European country manufacturers are government-owned.

Mr. EWING. Thank you. Thank you both.

Mr. MCNAMARA. Thank you.

Mr. OBERSTAR. One of our previous witnesses, Mr. Katzman, said that—well, was suggesting that to be an exception to the statute of repose in cases in which evidence of a defect is hidden by a manufacturer. First of all, do you know of any such cases?

Mr. MCNAMARA. I have heard of those types of cases, sir. That—you wonder if that is not something of a natural reaction.

Mr. OBERSTAR. Were there cases in New Jersey that revolve around the central point that the manufacturer knew of a defect, did not reveal it, it was a hidden factor and the case was decided on that point?

Mr. MCNAMARA. No, not—well, I am not sure it was tried in New Jersey or Philadelphia. It was tried by a New Jersey attorney. It was a Cessna seat slipping case where I believe the knowledge of the condition—I am sorry. I correct myself. It was not that case. But I do recall one case where there was knowledge of a condition that was covered up, so to speak, and they—and I think that personally I don't have a problem with that. I believe that the normal case in this country is when—if a manufacturer knew about a defect in his aircraft that he would advise about it and in fact there is an established system for doing that.

They have in the aviation world various levels of notices to aircraft owners. One level is from the manufacturer called a service bulletin and as an aircraft owner I frequently receive these types of bulletins and these are notices from the manufacturer that we have got—we have discovered a problem. We would like you to address it and here is what we recommend be done to correct it.

The next level would be an air worthiness directive which would be received from the FAA. Now, it is mandatory that you address this problem. If a manufacturer knew of a defect and didn't pursue that process, then I would have different feelings about that manufacturer's liability.

Mr. OBERSTAR. Mr. Leavens or Mr. McNamara, do you feel that the legislation should include an exception for such cases that in such instances the manufacturer shouldn't be liable, the statute of repose would not apply, or would such negligence or cover up be addressed by other principles of law and that we need not make some exception in this legislation?

Mr. LEAVENS. My own feeling is, as a consumer, if a manufacturer knowingly did something or if something was discovered over a period of time that would put my life at risk, I would certainly want that protection. But again, how do you legislate against wear and tear? You can't. All you can do is—well, all I can do as a pilot is make certain my aircraft is maintained properly. A lot of it comes back to the personal responsibility of ownership, knowing your aircraft, knowing what can go wrong by following the ADs and following service difficulty reports and following the information that is published.

There is an entire industry devoted to revealing potential product shortfalls. There is an excellent magazine called Aviation Consumer that bangs on everything that doesn't work as well as it should in this business. And again we pilots talk to each other. We have access to information on what works and what doesn't work. But, no, if there was—if there was fraud, I would imagine that could be—that could be documented and that could serve as the basis of another claim.

Mr. MCNAMARA. There should be notification of a latent defect when the manufacturer has knowledge of it. I believe that is already required under the Federal aviation regulations and a violation of Federal aviation regulations would be negligence per se in any event.

Mr. OBERSTAR. Thank you very, very much. We really do appreciate both of you participating in our hearing today and adding some insight on various problems that we have grappled with throughout the hearing and the consideration of this legislation.

Mr. LEAVENS. Thank you, sir.

Mr. MCNAMARA. Thank you, sir. We enjoyed it.

Mr. OBERSTAR. The subcommittee is adjourned.

[Whereupon, at 3:46 p.m., the subcommittee was adjourned.]

PREPARED STATEMENTS SUBMITTED BY WITNESSES

AOPA
AIRCRAFT OWNERS AND PILOTS ASSOCIATION
421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375

Statement of Phil Boyer

President

Aircraft Owners and Pilots Association

Before the

House Committee on Public Works & Transportation

Subcommittee on Aviation

The Honorable James L. Oberstar, Chairman

Concerning the
General Aviation Revitalization Act of 1993

October 27, 1993

Member of International Council of Aircraft Owner and Pilot Associations

Mr. Chairman, my name is Phil Boyer, and I am President of the Aircraft Owners and Pilots Association. We are pleased to offer our strong support for the General Aviation Revitalization Act of 1993. House Resolution 3087 is sponsored by Congressman Dan Glickman and Congressman James Hansen, and it is co-sponsored by more than 240 Members of the House of Representatives.

AOPA represents the interests of more than 310,000 individual members who own and fly general aviation aircraft to fulfill their personal and business transportation needs. That is 60% of the active pilots in the United States. AOPA members own or lease 62% of the aircraft in the general aviation fleet.

AOPA is a consumer organization which represents the interests of the likely victims of accidents involving general aviation aircraft. Thus, we have a clear interest in maintaining an adequate and equitable compensation system.

Nevertheless, in survey after survey, product liability reform is unquestionably the number one concern of our members. AOPA members overwhelmingly believe that unreasonable product liability exposure has diminished the availability of affordable general aviation aircraft and parts and has aided in the downfall of the U.S. general aviation manufacturing industry.

Mr. Chairman, we're not here today because we have an economic interest in product liability reform -- as the manufacturers clearly do. We're here because we truly believe product liability reform is in the best interests of AOPA members. They are the consumers who own and operate general aviation aircraft.

The manufacturers will cite the statistics that clearly indicate general aviation as an ailing industry. Equally important, however, is the concern shared by our members, the owners and pilots who operate the nation's fleet of general aviation aircraft. (GRAPH 1) When asked about the future of general aviation, a majority of the AOPA membership are pessimistic. This is an alarming statistic considering that these are the heavy users of the system.

They see the same facts and figures about general aviation that drive them to this pessimism:

> (GRAPH 2) Active pilots were well over 825,000 and at the close of 1992, the last official year for figures, the total pilot population reached the lowest count of the last 25 years: 682,000 certificate holders!

(GRAPH 3) Future growth of the pilot population can be predicted by looking at the student pilot certificates issued. At the end of last year this figure closed at a 22 year low: 78,000 new student pilots entering the system. AOPA tracks this number monthly, and based on the first nine months of 1993, we know the full year will close worse than 1992. Remember, from this group comes our air carrier and military pilots, which a recent "Blue Ribbon Panel" led by Senator McCain indicates will suffer in numbers of trained replacement pilots some five to ten years out.

(GRAPH 4) Just as alarming are the statistics showing a substantial decline in the number of private pilot certificates held. This is a direct reflection on the student numbers dropping, hence fewer numbers achieve their private license.

(GRAPHS 5 & 6) Let me take just a moment as I cover this "snapshot" of the general aviation industry to show two other graphs with downward trends, but that represent "good news". Adjusted for hours flown, the general aviation safety record is improving each and every year. Whether it be total accidents or fatal accidents, the G.A. pilots of today are safer, better trained and continue to improve on what is now a quite impressive safety record.

Why is all the "bad news" depicted on the preceding charts? We asked AOPA members, your voters, to tell us what they felt were the most important issues facing general aviation today? (GRAPH 7) One half cited Product Liability as the key issue. It was followed by the high cost of flying, in many cases as I will point out later, related to our present liability laws. Other AOPA policy and issue surveys reveal that 97% of our members believe that product liability is a major concern for the industry. Half are convinced that low production of new aircraft due in part to product liability problems is the most important issue facing general aviation today.

Ninety-three percent of AOPA members are willing to give up their theoretical right to sue an aircraft manufacturer for production or design defects in older aircraft to help reduce the industry's product liability burden. This staggering majority of our members also believe that Congress should pass a reasonable statute of repose for general aviation aircraft.

We listen to our members and we have heard their nearly unanimous call for action on product liability reform. But because of the longstanding obstacles to product liability reform, we at AOPA began to rethink this problem approximately two years ago. We came to the conclusion that there might be key components of previous product liability bills which, if proposed separately, would stand a better chance of passing than the more comprehensive reform legislation.

Our focus turned specifically to the statute of repose, and we stepped forward in 1992 with our own concept of a General Aviation Revitalization Plan -- advocating separate statute of repose legislation as the key component. As part of this early effort, we flew to Wichita to meet with the manufacturers and tour their facilities. We visited with Congressman Glickman and other long time proponents of product liability reform. Our new thinking on the issue convinced us that a statute of repose is the single most important step which could be taken to provide relief for aircraft manufacturers.

For this reason, we are extremely pleased by the strong support the Glickman/Hansen bill has received so far from Members of Congress. We see this as our best opportunity yet to achieve meaningful progress on this longstanding issue, and we are prepared to apply the full resources of our Association to the task. Furthermore, because the Committee on Public Works and the Aviation Subcommittee have consistently supported product liability reform efforts for the general aviation industry, we are counting on early action on the bill by this Committee to help us succeed.

This legislation represents a new approach to the product liability problem, and it is a much more limited proposal than the bills from previous years. AOPA agrees wholeheartedly with the new approach.

(GRAPH 8) To make sure we were on the right track, we asked pilots and owners about the specific Statute of Repose legislation, and 92% indicated you and your fellow members of Congress should pass such a bill. Never before has AOPA surveyed an issue, and gotten this sort of overwhelming consensus. (GRAPH 9) More important, there is an expectation that this would bring modest price relief to aircraft pricing, which addresses the cost issue which I cited earlier as the number two concern.

The 15 year statute of repose proposed by Congressmen Glickman and Hansen will aid the manufacturing industry by substantially increasing the difficulty of filing nuisance lawsuits against the major airframe manufacturers. They are the obvious "deep pockets" in most cases. Yet the bill also preserves the balanced approach we as consumers must insist upon to ensure a remedy in cases where a defective part or component is actually to blame for an accident. Here's how.

While the average age of the general aviation fleet is around 28 years old, there really is no such thing as a 15 year old aircraft. The airframe might be that old, or even older. But the aircraft as a whole is actually a collection of newer parts regularly replaced throughout the useful life of the airframe. Unlike an automobile which tends to wear out entirely after five or ten years, older aircraft are really an "old" collection of "new" components attached to an original airframe with an indefinite useful life.

The Glickman/Hansen bill ensures that consumers will have a redress for defective components by providing that the 15 year clock begins to run anew on each individual part whenever it is replaced or installed. So the airframe manufacturer of an older aircraft would be protected by the fifteen year statute of repose, and so would the manufacturer of those very few parts or components which happen to last 15 years or longer. But our members will continue to have a remedy in cases where a more recently installed part proves defective.

Obviously, very few new aircraft are being produced, and we certainly hope the Glickman/Hansen bill will help stimulate the production of new aircraft. But the product liability problem often impacts our members in even more direct fashion.

For example, we are alarmed by the growing shortage of new replacement parts for existing aircraft. Product liability is a major reason for the lack of parts for the aging general aviation fleet. I'm aware of one case, for example, where a Piper Saratoga -- a typical six seat aircraft -- sat idle on the ramp for nine months because it was not possible to secure a simple replacement actuator for the landing gear.

Furthermore, product liability concerns have stymied research and development. We're relying on ancient technology. Did you know we're still using magnetos in aircraft engines, even though they haven't been used in automobiles since 1915? You won't find an electronic ignition system in an aircraft. But they've been in automobiles for twenty-five years.

(GRAPH 10) Never before in history has a consumer group been so willing to help an industry by delicately balancing their right to sue a manufacturer with relief for the industry to produce new product and support present products. A full 93% of the AOPA membership indicates the support for a limited Statute of Repose.

(GRAPH 11) Again, introduction of the Glickman/Hansen General Aviation Revitalization Plan has presented us with an outstanding opportunity to address the product liability problem. We intend to pursue this opportunity with the full resources of our organization. We will ask our members for their active support in this effort, and we anticipate an overwhelming response from them.

To help us capitalize on this opportunity, Mr. Chairman, we urge the Committee to mark up the bill and report it to the full House before the end of the current session of Congress. This would establish the firm foundation we need on which to build our further efforts when Congress returns in January. No single action by this Committee could possibly be more important to the ailing general aviation industry.

The downward spiral of our industry continues, and we must develop creative approaches to reverse the trend. We look forward to working with the Committee as we approach this most difficult of issues from a new perspective. Our future depends on it.

My thanks again for the opportunity to share our thoughts, Mr. Chairman. I will be happy to answer any questions.

Statement of
Theodore J. Collins
Vice President and General Counsel
The Boeing Company
on behalf of
Aerospace Industries Association
before the
Subcommittee on Aviation
Committee on Public Works and Transportation

October 27, 1993

Mr. Chairman, I certainly appreciate this opportunity to appear today on behalf of the Aerospace Industries Association (AIA). I am Ted Collins, Vice President and General Counsel of The Boeing Company in Seattle. "Why" you may ask are the manufacturers of large commercial and military aircraft appearing at a hearing on the General Aviation Revitalization Act? Well, Mr. Chairman, there are several reasons.

First, we support H.R. 3087. As you know, AIA represents the manufacturers of not only large commercial transports, but also the manufacturers of engines and components for general aviation and other aircraft. This bill is an appropriate response to a problem that plagues the general aviation industry.

My colleagues from General Aviation Manufacturers Association (GAMA) have presented the reasons why H.R. 3087 needs to be passed--I cannot add much to the story, other than to agree with their concerns and to give our support. The general aviation industry is troubled and needs help to address the long tail of its product liability risk. The 15 year statute of repose is a measured solution to a real problem.

H.R. 3087 has broad based support. There aren't many bills pending in the House that are cosponsored by more than half of the membership. All facets of the aviation industry support the measure, as does the union that represents the people who build the aircraft and the people who fly the aircraft. The AIA strongly endorses this legislation.

A 15 year statute of repose should be signed into law this year.

There is another reason why the AIA asked to address the Subcommittee.

In August, AIA and GAMA submitted "friend of the court" briefs to the Supreme Court regarding *Piper Aircraft Corp. v. Cleveland*, a case that would determine whether individual states can set their own aircraft design standards by allowing plaintiffs to challenge federally approved designs in product liability lawsuits.

The case involved a challenge to the design of the venerable Piper Super Cub. The Super Cub, which received its Type Certificate in 1949, has a classic single engine, high wing, tailwheel design--commonly called a "tail dragger." In the Piper case, plaintiff had installed a large movie camera in the front seat and was piloting the Piper Cub from the rear. During his takeoff run, plaintiff crashed the Piper Cub into a van that the owner of the airpark had parked on the runway to prevent the takeoff. Plaintiff hit his head on the camera and was seriously injured.

Federal Aviation Administration, pursuant to regulation, specifically authorized the manufacture of "tail dragger" design aircraft with their inherent preflight forward visibility limitations. In granting the type certificate, the FAA considered the advantages and disadvantages of a tailwheel design and made a determination that the tail dragger design was safe and airworthy.

Plaintiff sued Piper on a negligent design theory and argued that the tailwheel design limited preflight visibility and that Piper should have used a tricycle nosewheel design. The jury verdict resulted in a judgment against Piper exceeding $1,000,000.

Piper appealed and argued that federal law preempted state law challenges to federally approved aircraft designs, including challenges that arise in a state tort action. As the Supreme Court has held, tort judgments can be just as important as state statutes and regulations in governing industry's conduct. The Department of Transportation (DOT) as well as GAMA and Aircraft Operators and Pilots Association (AOPA) filed briefs supporting Piper.

The United States Court of Appeals for the Tenth Circuit upheld the jury's verdict. The tenth circuit's decision, in effect, declared an entire class of aircraft, the tail dragger design, unreasonably dangerous. In doing so, the court relied primarily on a savings clause in the 1958 Federal Aviation Act that preserved "remedies now existing at common law or by statute." The court also based its holding on the premise that the Act authorized promulgation of "minimum standards" and that "by designating the standards as minimum, Congress indicated that it did not want to bar states from adopting additional or more stringent standards." (Slip Op. p. 15) We believe the court misread both statutory provisions.

Nothing suggests that Congress intended to empower states to promulgate their own design standards. It is clear from the statute and its background that Congress intended the savings clause to preserve only state damage remedies for any injuries caused by a violation of federal design standards. Moreover, the delegation to the FAA of authority to promulgate "minimum standards" does not suggest that Congress reserved to the states the right to supersede and nullify those minimum federal standards.

In addition to enacting HR 3087, we believe Congress should amend the Federal Aviation Act to make clear that the FAA is the entity authorized to certify what is and is not a safe aircraft design and that the states are not free to reject the FAA's design decisions.

Mr. Chairman, I do not think it is necessary to go into further detail on this matter today. It is, however, important for the Subcommittee to be aware of the issue and I will submit for the record the briefs filed in the Tenth Circuit by GAMA and the DOT as well as the AIA brief filed in support of Supreme Court review. AIA and GAMA will continue to work to ensure federal preemption and uniform regulation of aircraft design and I would be pleased to answer any questions you may wish to ask.

Thank you, Mr. Chairman.

DUNAWAY & CROSS
A PROFESSIONAL CORPORATION
SUITE 400
1146 19TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 862-9700
TELECOPIER (202) 862-9710

MAC S DUNAWAY
GARY E CROSS
GEORGE C COURTOT
STEPHEN L PURCELL
STANLEY J GREEN
MATTHEW F HALL
CHRISTOPHER E ANDERS
JONATHAN S SHURBERG
* NOT ADMITTED IN D C

RAYMOND PHILIP SHAFER *
COUNSEL

October 25, 1993

Honorable James L. Oberstar
Chairman
Aviation Subcommittee
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515-6256

Dear Chairman Oberstar:

As a supplement to the Aerospace Industry Association's (AIA) testimony on October 27, 1993, enclosed please find copies of the amicus curiae briefs filed in the U.S. Supreme Court and the United States Court of Appeals for the Tenth Circuit on behalf of AIA and the General Aviation Manufacturers Association (GAMA) in the Piper Aircraft Corporation v. Cleveland case.

At issue in that case was whether Federal Aviation Administration (FAA) approval of an aircraft's design, made pursuant to the Federal Aviation Act (FA Act) and regulations promulgated thereunder, preempt states from imposing additional or different design requirements via legislative enactments, state-agency action or penalties levied through their tort system. The Tenth Circuit held that the FA Act and the FAA regulations had no preemptive effect on questions of aircraft design. The Supreme Court denied certiorari.

The impact of the Tenth Circuit's decision is far reaching. It will seriously impair the integrity of the system of national, uniform regulation of aircraft design and safety created by the FA Act. Juries will be at liberty to substitute their judgement for that of the FAA and impose design requirements of their own choosing, notwithstanding the fact that the FAA may have considered, and rejected, the same design requirements. We do not believe that such a result was intended or contemplated by Congress.

The primary basis of the Tenth Circuit's opinion was the court's conclusion that Congress had not expressed any specific intention to preempt state law regulating aircraft design. While we disagree with the court's conclusion, further judicial review of that decision is presently foreclosed.

Honorable James L. Oberstar
October 25, 1993

To address the court's finding on the absence of specific congressional intent, AIA urges the Committee to reaffirm its intention to unify exclusive control over all aspects of aircraft design and aircraft safety in the federal government and to preempt the imposition of substantive requirements in those areas by states.

We will be pleased to work with the Committee and staff to address this very important issue.

Very truly yours,

DUNAWAY & CROSS

Mac S. Dunaway
General Counsel
Aerospace Industries
Association, Inc.

NOTE: The enclosures were given to Chairman Oberstar. They are not included with this testimony.

STATEMENT BY
REPRESENTATIVE DAN GLICKMAN (D-KS)
BEFORE THE HOUSE PUBLIC WORKS SUBCOMMITTEE ON AVIATION
OCTOBER 27, 1993

Mr. Chairman, members of the subcommittee, I want to thank you for allowing me to testify this morning on behalf of the General Aviation Revitalization Act of 1993. This bill would help provide a future for the American general aviation industry, which is extremely important to the district I represent, Wichita, Kansas. I think few people realize that half the planes in the world are made in Wichita by Beech, Cessna, Learjet, and Boeing.

I have sponsored product liability legislation for general aviation in the last five Congresses. My legislation this year, which now has 248 cosponsors, has been scaled back significantly from previous product liability bills. This year, my colleague Jim Hansen and I have introduced a 15 year statute of repose: a simple time limit on civil actions for damages that may be brought against general aviation manufacturers or the manufacturers of component parts.

In Kansas, product liability is not an abstract subject; it means jobs. The number one fear in the minds of most Americans today has to do with jobs. In the general aviation industry alone, 100,000 jobs have been lost since 1983. The passage of this legislation will put thousands of people back to work in a high technology, highly skilled industry without costing the federal government a single penny.

For the first time, this legislation has been endorsed by labor. The International Association of Machinists has endorsed a 15 year statute of repose as much-needed legislation to restore jobs to thousands of aerospace workers and machinists across the country.

This legislation also has the support of the manufacturers and users of general aviation aircraft -- a unique combination for product liability reform legislation. Indeed, the bill is supported by the entire general aviation community. Most recently, the bill was endorsed by President Clinton's National Commission to Ensure a Strong, Competitive Airline Industry.

In 1993, the average single-engine piston aircraft in the U.S. fleet is 27 years old. The average turbine aircraft is 15. Each one of these planes represents for U.S. manufacturers a liability risk of unknown proportion because the general aviation industry is perceived as having the "deep pockets" necessary for large recoveries.

Despite a steady improvement in safety, liability costs are the largest single cost component in the manufacture of an airplane, pushing the price of new aircraft beyond the reach of many consumers. The direct result has been a drop in new aircraft sales from 18,000 units in 1978 to only 899 in 1992, the lowest number ever. Cessna Aircraft has not produced a piston-engine plane since 1986, Piper Aircraft is currently in bankruptcy, and Beech Aircraft is no longer producing light training aircraft.

The victims here are the low-cost piston engine aircraft you don't have to be a millionaire to own. These planes are not made anymore in the United States because the cost of liability is prohibitive. These were the planes that young pilots learned to fly in and which sparked people's interest in flying.

A Department of Transportation advisory panel last month released a study predicting a future shortage of well-qualified pilots and aviation mechanics. The report encourages U.S. manufacturers to produce reasonably priced training aircraft by recommending that Congress put limits on excess product liability awards by the courts. To quote the study, **"this would enable the United States to be more competitive with foreign manufacturers, currently the principal source of new general aviation and training aircraft used in the United States."**

Traditionally, the United States has been the leader in the high tech aviation industry, but burdensome liability costs have dragged it down so that we are unable to compete. In 1980, there were 29 manufacturers of piston aircraft in the U.S. and 15 foreign manufacturers. In 1992, there were nine U.S. manufacturers and 29 foreign manufacturers of piston aircraft. We must act now, before foreign manufacturers, not encumbered by the high liability costs of American manufacturers, completely fill the void in our aircraft production.

This small plane industry is the genesis of the entire aviation industry, and we are jeopardizing our position as the world leader in aviation and aerospace by ignoring this most fundamental problem.

Mr. Chairman, I hope this hearings will now set the stage for movement on a statute of repose in the House Judiciary Committee, of which I am a member. You and the members of the Public Works Committee have chosen to start the ball rolling, and I appreciate your interest in this important piece of legislation.

STATEMENT OF JAMES V. HANSEN

FIRST DISTRICT OF UTAH

OCTOBER 27, 1993

Mr. Chairman, today I am here to address H.R. 3087 which Mr. Glickman and myself recently introduced. I appreciate the opportunity the Subcommittee has given me to state my personal conviction to its successful passage. It is my belief, in conjunction with others, that our entire light aircraft industry is in serious trouble. The constant threat of product liability lawsuits has devastated this industry and I believe it is time to do something about it.

As a private pilot, I learned to fly and gained tremendous respect for everyone involved in ensuring a plane is airworthy. From my early flying days, I learned to love the freedom and excitement that comes from sitting in a cockpit and maneuvering an airplane through the sky. The great experiences I have had in the air taught me to admire those who dared to dream about flying.

The roots of aviation are buried in this nation's soil. For many centuries, scientists and dreamers have believed they could fly. But in December of 1903, the Wright Brothers wrote themselves into history and the ageless preoccupation and fantasy of mankind became a reality. Many great men and women have sacrificed their time, money and even their lives to build something great. We are all beneficiaries of their perseverance and bravery.

Single-engine aircraft are the backbone of the general aviation fleet. The research, development and new technology in the industry has brought the United States jobs, billions of dollars and a reputation of excellence in this business. But, an overactive plaintiffs bar has exploited American aircraft manufacturers and created a situation where no one is benefitting except them. Litigation is like cancer; there is no way of predicting when it will hit, and the costs of coping with it have risen beyond belief. Because of this onslaught, production has diminished considerably, workers have lost employment and private pilots no longer have access to affordable, U.S. made light aircraft.

Every pilot is aware of the danger and risk involved when flying; nature has a will of its own and one small mistake can be life threatening. Sometimes, tragedy does occur. A pilot's confidence can be lost with a sudden change in weather, or a situation may be misjudged. But very rarely does an accident occur because the aircraft was poorly manufactured. Studies indicate that 93 percent of the accidents that do occur are beyond the manufacturers control.

Accurate data is available which proves that light aircraft are now safer than ever. Since the 1940's the number of fatal accidents involving small planes has declined by 700 percent, however, the lawsuits continue. Companies like Cessna, Piper and Beech are still responsible for every airplane they ever made. Together, these companies currently support nearly 169,000 piston aircraft registered in the U.S. fleet.

Although a multitude of improvements have been made to ensure small airplanes are safe, liability costs remain the largest single line-item for the manufacturers. With no limit to their liability, it's impossible to predict present and future costs. Therefore, in order to prevent the devastation of their business, these manufacturers have been forced to cut the greatest financial risk from their budget - the piston driven plane.

I strongly believe that this industry deserves our attention. Companies are being punished for building quality products that last for decades. They are forced to pay hundreds of thousands of dollars to prove their aircraft is sound - although it may be well over 25 years old. In addition, over 50% of U.S. jobs have been lost and private pilots can no longer afford to purchase a new plane. We must do something now.

H.R. 3087 proposes a 15-year limit on any civil action involving the manufacturer of the aircraft or the manufacturer of any component part. This limitation is ideal. After 15 years, the majority of single engines planes have over 6,000 flight hours; have been sold three times; and have also been through three major overhauls. We don't expect GM to be liable for a car that has traded hands three times and has had its engine rebuilt. So, why should an aircraft manufacturer be liable for a product that has proved itself time and time again? Fifteen years is a reasonable request. It's fair to say, the manufacturer has adequately proven a quality product was built after 15 years have expired.

This bill makes sense. By enacting H.R. 3087, we will put thousands of Americans back to work, prevent a foreign market takeover and stimulate an industry that has fallen on its nose. The entire general aviation community supports this bill; manufacturers, consumers and workers. Over 245 members of the House have signed the bill and recently, the *National Commission to Ensure A Strong Competitive Airline Industry* endorsed the idea of a 15-year statute of repose. This unique combination of support is unprecedented in the product liability arena.

The bill does not create a federal standard of liability, will not limit the jurisdiction of any state court and does not attempt to change existing state laws with regard to joint and several liability, comparative negligence, or punitive damages. I do not believe this bill solves all of the aviation industry's problems, but it will create a balance in the market.

Let's support the foundation of the entire aviation industry and give jobs back to deserving Americans. Support H.R. 3087 and hand the aviation industry back to this country. Mr. Chairman, I thank you and the Subcommittee for your time.

STEVENSAVIATION

Stevens Aviation, Inc.
Greenville-Spartanburg Airport
P.O. Box 12349
Greenville, SC 29612-0349
Office: 803-879-6000
FAX: 803-879-6215

Kurt A. Herwald
Chairman

Testimony
Before the Subcommittee on Aviation
On H.R. 3087, General Aviation Revitalization Act of 1993

By:

Kurt A. Herwald
Chairman and CEO
Stevens Aviation, Inc.

Wednesday, October 27, 1993

I represent Stevens Aviation and believe my views on the Act are consistent with those of most companies in general aviation services. Our trade group, the National Air Transportation Association, has formally endorsed the Act. My testimony will focus on the expected impact of the Act on the general aviation services industry and not the impact on users or manufacturers. The manufacturers and users are well represented here and there is no need to repeat their positions.

I support passage of the General Aviation Revitalization Act of 1993 (H.R. 3087) for the following reasons. In general, I believe any reasoned attempt at tort reform will benefit the country. More specifically, the Act would help revitalize the light plane industry, which I believe is vital to the long-term success of our entire aviation industry. Besides the benefits directly related to manufacturing light aircraft, the aviation services sector would benefit greatly from additional activity in the near-term, and greater viability in the long-term. This will facilitate the creation of numerous, highly desirable jobs involved in utilizing and servicing the new aircraft. I also take issue with the argument that service providers will now become the target of lawsuits, in place of the manufacturers.

Industry Overview

The aerospace industry is segmented into three broad sections: (i) the military segment, encompassing all U.S. military aviation operations; (ii) the commercial segment, involving the airline industry; and (iii) the general aviation segment, representing corporate and private flight operations, business charters, flight training, and cargo delivery. Active military aircraft in the continental U.S. number just over 18,000, and are comprised of approximately 9,000 jets, 2,000 turboprops, 200 pistons and 6,800 rotorcrafts. Commercial aircraft account for approximately

5,800 aircraft, the majority of which are large jets. Included in this 5,800 aircraft are approximately 1,900 regional turboprop aircraft. These aircraft accumulate over 12.6 million flight hours per year, with the regional fleet accounting for almost 3.5 million of these hours.

General Aviation Market

The general aviation market is by some measures the largest segment of the aviation industry in the United States, with a fleet totaling more than 212,000 aircraft. General aviation activity represents 61% of all aircraft operations at U.S. airports. The service segment directly employs more than 270,000, who earn an annual payroll of over $6.6 billion. There are more than 12,900 general aviation airports in the U.S., compared to approximately 425 commercial service airports. Accordingly, general aviation airports are the primary air link to approximately 19,000 small communities and 400 cities across the country. The general aviation fleet is serviced by Fixed Base Operators ("FBOs") located at airports around the country. The services and amenities provided by FBOs vary widely, but typically include fueling support, terminal services and some maintenance capabilities.

Some FBOs chose to focus their efforts on technical services activities for the corporate operator and other advanced aircraft, and are often referred to as aircraft service organizations ("ASOs"). These ASOs offer major maintenance, modifications, refurbishments, avionics installation and repairs, as well as other technically complex services. This distinction between FBOs and ASOs is becoming more pronounced as the technical complexity of aircraft increases.

The vast majority, however, focus on servicing the needs of the private operator. These FBOs are the primary provider of maintenance, storage and other services for the roughly 160,000 active light aircraft. The companies are also directly or indirectly responsible for providing nearly all of the flight training for the nation's 120,000 student pilots.

FBOs of all sizes and specialties provide on-demand charter services (FAR Part 135) and aircraft management services. In these capacities, FBOs are believed to own or operate over half of the general aviation fleet.

The development of the FBO industry was tied to the proliferation of general aviation in the years following World War II. This growth was initially fueled by dozens of U.S. companies, many of which had been involved in the war effort, beginning production of light aircraft. Until recently, most FBOs' business was concentrated in three areas: (i) selling fuel to general aviation and commercial operators; (ii) maintaining small aircraft on a regional basis; and, (iii) selling piston-powered aircraft, which made up the majority of their profits. Corporate aviation became an important segment of general aviation during the 1960s and 1970s, following the successful introduction of aircraft such as the Lockheed Jetstar, the Lear Jet and the Beech King Air. These planes were turbine-powered, and the first to be specifically designed to meet the needs of the corporate operator. A relatively small number of FBOs evolved to service the complex needs of the corporate operator, while the vast majority became increasingly dependent on the private pilot for their livelihood.

The industry was devastated in the late 1970s and early 1980s by the dramatic decline in new aircraft sales. Unit sales of piston aircraft fell 87% in five years, from over 17,000 units in 1978 to 2,228 units in 1983, and hit a post-World War II low of 551 units in 1992. The decline in piston aircraft sales is attributed to the escalating cost of product liability, which caused most producers to discontinue manufacturing light aircraft. As new aircraft sales declined, FBOs lost this important source of earnings, leaving many unable to continue profitable operations. The virtual elimination of new aircraft sales as a profit center forced many FBOs out of business. This is evidenced by the fact that the number of domestic FBOs fell from over 10,000 in 1980, to 5,250 in 1990, and under 4,300 today. Industry observers predict the number of FBOs will decline to only 2,000, unless aircraft sales improve.

The staggering fall-off in the number of new piston aircraft has contributed to the downturn in general aviation service and activity. A few indications of general aviation's problems include:

> The number of FBOs in the country has declined from 10,250 in 1980 to 4,250 today.
>
> Employment in general aviation services is believed to have dwindled to less than half of 1980's level. A loss of 270,000 jobs.
>
> The number of student pilots has declined by almost 40% since the late 1970s and early 1980s. The problem is getting worse with only 65,000 new student certificates expected to be issued in 1993, the lowest level in decades and 20% below 1992. The number of active pilots has likewise declined by 38%.
>
> Total general aviation flight hours have declined from 40,704,000 in 1981 to only 30,067,000 in 1991.

Stevens Aviation, headquartered in Greenville, South Carolina, operates five FBOs in the Southeast and Ohio, and is a leading aircraft services organization. Stevens is one of the larger and better-known providers of technical services to the corporate fleet. As a leading distributor for Beech Aircraft and Aerospatiale, Stevens is an active participant in the market for new piston aircraft. Other important services that we provide include fueling, storage, maintenance, charter, aircraft management and airline support activities.

Stevens has 350 employees and an annual payroll of nearly $10 million. Of these jobs, 160 are highly skilled technicians who maintain and modify aircraft. These technicians earn an average salary, excluding benefits and over-time, of $28,800 and typically stay employed with Stevens until retirement. To maintain the employees' skills, the Company invests an average of $1,500 per employee each year in training, not including the cost of the employee's time. In a recent employee survey, over 90% rated their work as important and interesting.

The Demand Cycle

Within aviation it is almost universally accepted that lowering the product liability burden will result in more companies producing more light aircraft and being able to offer them at lower prices. The arguments are clearly compelling. Simply stated, well-built aircraft last a very long time. No one can really say what the practical life span of a modern general aviation aircraft is. Given enough time, even a perfect aircraft is likely to be involved in some form of accident, through no fault of the plane's design or manufacture. Few products are profitable enough to justify accepting a multi-generational liability.

It is more than an article of faith that there will be demand for large quantities of new light aircraft if the selling price can be reduced from current levels. A marginal reduction in current prices would bring a disproportionate increase in demand for new aircraft from existing pilots. More important for long-term demand is the expected increase in training activity. For obvious reasons, training is the first step in the process of creating demand for light aircraft. The age of our training fleet (over 25 years on average) discourages many from learning to fly. Newer trainers should stimulate demand for training, which will, in turn, lead to more pilots and more demand for aircraft and related products and services. In 1992, the FAA issued only 65,000 student certificates versus an average of over 135,000 per year in the 1970s.

Will The Act Increase Suits Against FBOs?

I disagree with the argument made by some which speculates that service providers will substitute for manufacturers in suits. First of all, we are usually included anyway. More importantly, removal of the OEMs as deep pocket defendants will reduce the economic incentive of the trial lawyers and their clients, and decrease the total number of suits. Finally, even if we are subject to greater product liability suits, it will be worth it to rejuvenate the industry.

Economic Impact of New Piston Aircraft

The production and sale of new piston aircraft will have a direct impact on the FBO industry. Earnings and jobs will be created from additional flight activity and the actual sales process.

Stevens prepared the following analysis which indicates that if 30,000 additional new piston aircraft entered the fleet over five years, the impact on industry revenue would approximate $2 billion annually and increase employment by 12,800.

Assumptions:

–	Additional piston units per year:	6,000
	Five Year Total	30,000
–	Average Selling Price	$125,000
–	Training fleet is increased by 6,000	
–	Average utilization estimated at 350/hrs/yr	

Results:
Fifth Year's Service Revenue (in 1993-dollars in millions):

–	From Aircraft Sales (6,000 x $125,000)	750
–	From Line Services	350
–	From Technical Services	525
–	From Misc. (Storage, Insurance, etc.)	175
–	From New Pilot Training	150
		$1,950

Fifth Year Employment Projection

Job Category	Number	Avg. Salary	Total
Support and Admin	4,750	$22,000	$104,500,000
Technicians	4,750	28,800	136,800,000
Sales	600	50,000	30,000,000
Instructors	2,700	12,000	32,400,000
	12,800		$303,700,000

These projections do not include any jobs or impact beyond the FBO industry. Additional jobs will almost certainly be created due to the multiplier effect.

Employment Quality
Many of the jobs in general aviation services are highly desirable from both the employee's point of view and the economy's. The technician positions are desirable jobs in that they are very satisfying and pay very well. As stated earlier, the average technician at Stevens earns a base salary of $28,800 per year and nearly all consider their jobs interesting and important. These jobs are not exportable to other countries and, therefore, more secure for the employee and the economy.

Many of the lower paid positions serve the employees by enabling them to accumulate the experience needed to advance to more challenging and rewarding positions within aviation. For instance, with the exception of those trained in the military, most aviation professionals worked in supporting activities such as flight instruction or line service (fueling) while acquiring the training and experience needed to pursue an aviation career. This informal apprenticeship system is an integral part of our general aviation industry.

Long-Term Impact on Aviation Industry
America has dominated the aviation industry since its inception. One of the reasons for this was the wide access to aviation that was only available in America. While people everywhere want to learn to fly, only in America could they realistically pursue their dream. This access led to the highest concentration of pilots and technicians anywhere in the world. Many of these aviators were not satisfied with aviation as a hobby and chose to make it a career. Unlike most industries, people sought out aviation as the only place where they could satisfy their desires.

The large number of individuals seeking a place in aviation led to numerous innovations that allowed America to continue its position of leadership. Innovation was not limited to technological advances, but included new and innovative uses of aircraft. No other country uses aircraft as widely as the U.S. does for services such as executive transportation, overnight cargo, air ambulance, geological surveying, traffic observation, police work, off-shore support and, of course, recreation.

General aviation spawned numerous airlines, including USAir, and was responsible for revolutionizing package delivery services. The large fleet of private planes provides a vital secondary market for manufacturers and often supplies the volume needed to justify development of new technologies. Finally, the pilots and technicians themselves are often the source of innovation as is evidenced by the members of the Experimental Aircraft Association and their aircraft. Many new designs and technologies are first applied by these ingenious aviators.

The passage of this legislation will help get this vital industry back into a growth mode. The benefits are far greater than any realistic costs. No one in the industry opposes it. The manufacturers, users and service providers all support it enthusiastically. The only parties that could suffer from its passage are the plaintiffs' lawyers.

My name is David Ian Katzman and I am a trial lawyer and a pilot. My legal practice is almost exclusively engaged in the area of aviation personal injury and product liability, representing plaintiffs. I am an advocate of plaintiffs' rights and a strong supporter of general aviation and believe that general aviation should be promoted and plaintiffs rights should be preserved.

H.R. 3087, The General Aviation Revitalization Act of 1993 will provide the general aviation industry with an "extra-legal" immunity from civil liability for which it would otherwise be liable and which other industries do not enjoy. This type of "special legal treatment" will come at a cost to people who are injured due to fault otherwise attributable to these "protected manufacturers."

One important question which I contend should be asked by this Committee and this Congress is whether this statute of repose is fair and how it might be unfair. Potential litigants, corporations, individuals and their attorneys won't ask if this statute is "fair." That, of course, is the job of the legislature before it is enacted.

I would suggest this consideration. This statute of repose will be grossly unfair if a manufacturer either knows of a defect in its product before the fifteen (15) year period expires, or conceals evidence of a defect in its product before the time period expires. If a manufacturer, for example, has actual or constructive knowledge before the time period runs, and takes inadequate remedial action, it should not then receive by legislative fiat an exemption from liability. Similarly, if evidence of a defect were to be hidden or concealed by a manufacturer, the statute of repose should not apply. These should be regarded as questions of fact.

More disturbingly, this legislation provides no warnings to passengers or pilots that an aircraft is unsafe after fifteen (15) years. Many design defects are latent and do not show up until later years. For example, fifty (50%) percent of the Learjet model 23 aircraft (manufactured in the late 1960's) have crashed and the other fifty (50%) percent are over fifteen (15) years old and will probably crash also.

Additionally, airplanes are expected to be used well over fifteen (15) years and, in fact, half of the aircraft flown today are over fifteen (15) years old. The average age of aircraft today is twenty-three (23) years old.

As one of its basic tenants, the law demands the most even of playing fields.

SCHADEN, WILSON & KATZMAN

DAVID IAN KATZMAN, P-39886
800 N. Woodward Ave., Ste. 102
Birmingham, MI 48009
(313) 258-4800

Attorney for Plaintiffs

DATED: October 22, 1993

TESTIMONY before the SUBCOMMITTEE on AVIATION

HOUSE PUBLIC WORKS and TRANSPORTATION COMMITTEE

OCTOBER 27, 1993

HR 3087

Presented by

William B. Leavens, III, President

MID-ATLANTIC AVIATION COALITION
P. O. Box 673
Long Valley, NJ 07853
201-244-0071

Mr. Chairman, Honorable Members of the Committee,

My name is William Leavens and I am here to represent the 1500 members of the Mid-Atlantic Aviation Coalition. Our membership is mainly comprised of general aviation enthusiasts who belong to our constituent organizations including flying clubs, EAA chapters, and fixed base operators. We have a primary interest in seeing this resolution enacted into law. We thank you for the opportunity to present testimony on this issue.

General aviation in the United States is dying from one sole cause. Companies that manufacture small aircraft cannot build and sell their products at a price that people can afford. The one principal reason for this is that the purchase price of new general aviation aircraft is artificially inflated by excessive costs of product liability insurance that manufacturers must buy to protect themselves from unwarranted lawsuits.

From personal experience, this artificially high cost affects my choices and opportunities as a pilot, prospective new aircraft purchaser, and qualified user of the nation's airspace system.

I am fortunate to be able to fly an older Cessna model 140A which I purchased some seven years ago. It is a perfectly good aircraft; it serves most of my purposes, but I would like to be able to replace it some day and buy an aircraft with greater capabilities. Presently, that is not possible. My 43 year old airplane originally sold in 1950 for about $3200. It cost me $9,000 to purchase in 1986. If I were to buy a new factory built aircraft with the same capability today, the purchase price would approach $100,000. But the manufacturer, Cessna, has not built a similar basic aircraft since 1986. Cessna can't afford the risk of liability exposure and potential customers can't afford to pay Cessna the premium expense of product liability insurance to protect the company. Consequently, all of the company's entry level aircraft have been withdrawn from the market. That limits consumer opportunity and competition.

The high cost of product liability insurance affects older companies with 50 or 60 years of manufacturing history far more than new entrants into the field. Cessna is still on the liability hook for my old airplane. Cessna, Piper, and Beech have been building aircraft since before World War II. Those companies, their heirs, and assigns must carry the financial burden of half-a-century's liability tail until their financial resources are exhausted and they cease operations.

The cost of product liability insurance premiums and excessive damage awards paid to people who crash all those obsolete aircraft gets passed right on to anyone who wants to buy a new airplane. The answer to this dilemma is to put a finite limit, fifteen years, on the amount of time a manufacturer is responsible for warranting the safety of a product.

I want to believe that there has been some technical progress since my airplane was built. Yet manufacturers are penalized for introducing new improvements and designs. Plaintiff's attorneys have successfully argued that an older design was "faulty" or why would it have been replaced? This very thought kills creativity, ignores advances in materials science and engineering, and prevents the introduction of potentially wonderful new products to enrich our lives.

Aircraft are expensive to buy because they are expensive to build. Another part of that cost-to-build can be attributed to manufacturing economies of scale. In general if a manufacturer can produce and sell more airplanes or any other good, there will be a decrease in the per unit cost of manufacturing. Any artificial cost increase will affect demand for a product to some extent. The example of declining aircraft sales over the past two decades is a dramatic illustration of how great that effect can be. Product liability costs have thoroughly skewed the market factors that make our capitalist system work.

However, product liability costs are not only borne by aircraft manufacturers, but by the hundreds of suppliers who make components which are used to build aircraft. Product liability costs are cumulative, summed over the entire aviation industry. The resulting high artificial cost for aviation components is a barrier to entry, discouraging new companies from entering production. That further limits consumer opportunity and competition.

Parenthetically, all of those aircraft and components that go into making aircraft are designed and manufactured to meet standards and regulations established by the Federal Aviation Administration and codified in the Federal Aviation Regulations. By granting an airworthiness certificate the government essentially approves the demonstrated safety of an aircraft. If the federal government says that an aircraft passes tests required to meet the standards, why is a manufacturer liable in any product fault question? The person that buys a new aircraft winds up paying the manufacturer's costs of designing and testing to meet government regulations. Why is the government in the aircraft design approval business if not to provide some measure of protection to manufacturers, too?

One issue which H.R. 3087 does not address is the system of punitive damage awards to the successful litigants in a product liability case. A jury that determines that a manufacturer's product is harmful can award an additional amount of compensation to the plaintiff. Punitive damages are awarded to "teach someone a lesson" by imposing a financial penalty greater than the damage suffered by an aggrieved party. That punishment is levied to discourage behavior which imperils society, to penalize the antisocial act of making unsafe products. The concept of punitive damage awards is good. Brigand manufacturers of bad products should be discouraged.

Yet the plaintiff is only one of a whole class of people who might use a faulty product and who are potentially subject to its harmful effects. A manufactured aircraft was built for a larger population than just the plaintiff. Any damage award should be paid to an organization, government agency or other entity that represents or looks after the welfare of the entire class of product users. In the case of punitive damage awards against aviation manufacturers, there are logical award recipients in public foundations or government agencies like NASA and the FAA that work to improve flight safety. Bad behavior on the part of manufacturers would still be punished and discouraged. The present system serves only to transfer vast wealth to product liability lawyers. It does absolutely nothing to improve aircraft safety.

There are roughly ten lawyers for every engineer in this country. In Japan there are nearly ten engineers for every lawyer. Which industrial economy will inherit the future? Strong industrial societies (and high standards of living) exist because capital formation and manufacturing creativity are encouraged. Unnecessary, excessive legal fees and insurance premiums are being sucked right out of the most creative and productive parts of our economic system. Unless the product liability pendulum starts to swing the other way, we're dead, economically. The members of Congress have the unique ability to reverse that pendulum swing.

We have to confront the fact that our product liability laws are ruining our industrial base. This doesn't affect just airplane manufacturing, it cuts across the board and touches virtually every single product category and a great number of critical services like health care. At one time, general aviation export sales contributed significantly toward our balance of trade. A proud industry has been gutted and a rewarding way of life nearly eradicated by a legal system driven by greed, fear, and ignorance, not by compassion for those truly wronged.

I note that in less than two months, we will celebrate the 90th anniversary of powered flight. Orville and Wilbur Wright were not working for the military or for commercial interests. They were inventing personal aviation. They wanted to fly and their dream, personal aviation, is exactly what we are talking about today. This proposed legislation will go a long way toward correcting some of the basic injustice to personal aviation that has been built into our product tort system. It is imperative that this legislation be enacted into law if we are to celebrate one hundred years of personal flight.

Respectfully submitted,

October 27, 1993

Remarks Of Jack Mc Namara

On HR3087

On Behalf Of

The New Jersey Aviation Advisory Council

To The Subcommittee On Aviation Of The

House Public Works And Transportation Committee

Mr. Chairman, Members Of The Subcommittee, Ladies And Gentlemen.

My name is Jack McNamara and I represent the New Jersey Aviation Advisory Council, which is comprised of 32 aviation experts selected by the Commissioner of our Department of Transportation to serve as advisers directly to him on all aspects of aviation in our State.

New Jersey has long been a state which thrived on aviation manufacturing. The Foker Tri Motor, which carried Admiral Byrd historically over the North Pole, was manufactured at Teterboro. The Wright Patterson engine which powered the Spirit of Saint Louis was manufactured in Patterson. Curtiss Wright located its facilities at Caldwell. General Motors manufactured the P47 Thunderbolt at Linden.

Today New Jersey is home to over 400 aviation related businesses. Many of them are suffering, as is New Jersey's grand status as an aviation employer, because financial resources which otherwise would finance growth, are committed to product liability insurance premiums and litigation expenses. These, in turn, must be covered by price increases which reduce demand and sales revenues.

My own area of expertise is aviation law and in that capacity I am fully familiar with the affect of product liability litigation upon our States's aviation manufacturers. It serves no purpose to address this problem at the State level because aircraft parts travel everywhere and long arm jurisdiction drags our manufactures into every Court in the nation. Only Congress can give effective relief.

We have counseled our Commissioner of Transportation that one key to economic recovery for our nation, and certainly for New Jersey, is to bring product liability litigation under control. The Council views this 15 year statute of repose as a start at doing that. We also believe it has been long in coming.

This House has had aviation product liability legislation before it for more than a decade. Yet nothing has been accomplished. Aviation businesses in New Jersey and across the nation continue to suffer devastating verdicts arising from accidents involving aircraft designed and manufactured decades earlier.

We all know American aircraft are not negligently designed nor careless manufactured. America's brightest and most competent engineers work for our aircraft manufacturers. The design and manufacture of all aircraft are approved, certified and rigorously regulated by the Federal Aviation Administration which requires extensive testing for each new aircraft or part design. Our American legal system provides a force of litigators ready to pounce at the slightest hint of carelessness and wreck devastating results. ($27,000,000 for a seat that slips. $100,000,000 for an engine that fails. If the same injuries emanated from an automobile accident these verdicts would average 96 % less.) Taken all together this process has begotten the most carefully manufactured products in the world.

We believe it unjust to hold these same aircraft manufacturers liable for defects in designs which are more than 15 years old. Despite fantastic progress in technology from year to year, these trials insidiously, but inevitably, tend to become tests of yesterday's old aircraft design against today's brand new technology. Its patently unfair.

New Jersey was once a leader in aviation education. Today our flight schools cannot find affordable training aircraft. There is no longer a single engine trainer manufactured in this country. Students cannot afford the increased costs and increased costs and flight training programs cannot survive. We have lost one major college level program in aerospace at Princeton University and have only two technical aviation schools left in New Jersey.

As we loose these once viable aviation education programs our aviation technology dwindles. In turn, we loose our country's leadership as an aviation manufacturer. We see evidence of this already. America's great aircraft operators are now placing orders for European Consortium Airbuses, Swedish regional carrier aircraft, French, German and Italian helicopters, and even French-Italian consortium light single engine aircraft. This would have been inconceivable in 1970 when our flight training and aerospace programs were strong.

We are concerned most of all with encouraging an aeronautical education base for our young people. New Jersey, which has developed and graduated at least five generations of pilots, mechanics, and engineers, now suffers the wholesale destruction of its aviation industry as it once knew it. With it has gone the infrastructure and the impetus of our aviation educational system.

Our students have unhappily reviewed our unemployment statistics and noted, with growing distress, the out of work aircraft workers. They know we face the loss of more aviation jobs as airports close and defense cutbacks affect our State. No one can wonder that they are not encouraged by this.

Simply put, we want a viable general aviation fleet filling our skies again. We want our young people to learn aviation skills and go on to lucrative aviation jobs again. We want to put our unemployed aircraft workers back on the payroll again. We want a fair shot to compete in the aviation industry and we want to reclaim our role as the world's leader in manufacturing high quality aviation products.

HR 3087, once passed, will help. We urge you and your colleagues in the House to give this bill your ardent support. For that you will have earned our gratitude and helped the economic recovery we so badly need.

The New Jersey Aviation Advisory Council thanks the Subcommittee for this opportunity to address it. If you have any questions I will be happy to answer them.

Cessna

Statement
Russell W. Meyer, Jr.
Chairman and CEO
Cessna Aircraft Company
Before the
House Public Works and Transportation
Subcommittee on Aviation
on
H.R. 3087
The General Aviation Revitalization Act of 1993
October 27, 1993

Cessna Foundation, Inc., P O Box 7706, Wichita, Kansas 67277-7706, 316/941-6488, Fax 316/941-7812

Mr. Chairman and members of the Aviation Subcommittee, thank you very much for scheduling these hearings and inviting me to testify. We are gratified by the strong support for this legislation and I look forward to answering questions following my prepared comments.

It is important to emphasize that we are not here this morning to discuss tort reform. We are here to talk about the rebirth of an industry which has been essentially destroyed by the unlimited cost of product liability applicable to general aviation aircraft.

Most important, we are here today to discuss an opportunity to create thousands of jobs -- the kinds of skilled, well-paying jobs that we desperately need in this country -- simply by establishing a highly conservative 15-year limitation on the length of time an aircraft manufacturer is held liable for its aircraft.

It is also important to emphasize that we are not dealing with speculation this morning. We are dealing with facts. For example, the following brief statement is an accurate historical summary of the destructive impact of product liability on the general aviation industry:

1 - From 1965 to 1982, U.S. general aviation manufacturers sold an average of 13,000 piston engine aircraft each year. In 1993, the industry will deliver less than 500.

2 - Speaking strictly for Cessna during the same time frame, we sold an average of 6,500 piston aircraft each year. Solely because of the unlimited cost of product liability, we stopped building these aircraft in 1986.

3 - From an economic standpoint, the job loss has been staggering. More than 100,000 jobs have been lost in general aviation in the past 10 years.

4 - Again speaking strictly for Cessna, we employed almost 15,000 people in 1981. When we exited the single-engine piston aircraft business in 1986, we had

fewer than 3,000 employees, all of whom were working on our Citation business jet and Caravan utility aircraft.

5 - Ten years ago Cessna had more than 1,000 dealers worldwide engaged in selling our aircraft. Today we have zero.

6 - Throughout the 1965-1982 time frame, we sold at least 30 percent of our products outside the country, contributing substantially to U.S. balance of trade.

7 - From 1965-1982, U.S. companies produced more than 95 percent of the world's general aviation aircraft. Obviously that leadership has been destroyed and the economic benefits lost.

8 - When we were actively producing piston aircraft at Cessna, we provided job opportunities to young people not just in manufacturing, but also in engineering, marketing, product support, flight training and a wide range of technical services. We also provided

hundreds of aircraft each year to dozens of colleges and universities with aviation departments. Today we provide zero.

9 - Even though we have not produced a single-engine aircraft for more than seven years, we continue to be sued in almost every accident involving one of our aircraft, regardless of cause. In 40 percent of these cases, during the past five years, the aircraft were more than 15 years old.

10 - From 1965-1982, we invested $20-25 million every year at Cessna in research and development, an investment which created new and improved aircraft and which created jobs. Since 1986, we have stopped this investment in piston R&D.

But coincidentally, we have spent $20-25 million each year to defend hundreds of product liability cases. I hasten to point out that only a very small percentage of this $150 million was paid to claimants.

11 - During its first 15 years, on average, a general aviation aircraft accumulates 6,000 flight hours, has at least three engine overhauls and several owners, which is clear evidence of the integrity of the aircraft.

With that information as background, let me direct my comments to the benefits to both the industry and the country of a 15-year statute of repose:

1 - We have committed at Cessna to restart piston aircraft production as quickly as possible after the enactment of a statute of repose. As a result, literally hundreds of suppliers such as engine, avionics, propeller and instrumentation manufacturers, would increase their employment;

2 - Within five years, more than 25,000 jobs would be created at no cost to the government. These would be well-paying jobs in every sector of the industry and all areas of the country, and would include not only all phases of production, but also engineering, marketing and customer support;

3 - We would create a whole range of vocational opportunities for young people interested in a career in aviation;

4 - Manufacturers in this country would regain their worldwide leadership in this important industry, and new aircraft sales would contribute positively to our balance of trade;

5 - Student pilot starts would increase significantly, providing a necessary pool of pilots for the airlines and other commercial operations.

Further evidence of the merit of this legislation is the fact that a 15-year statute of repose is fully supported by literally every aviation consumer organization, some of whom you will hear from today. The bill is also strongly supported by the International Association of Machinists (IAM).

I had the privilege of serving as a member of the Airline Commission and am pleased that one of its major recommendations was the enactment of a 15-year statute of repose.

This legislation is a win-win-win situation. It will bring an important industry back to life. It will create thousands of jobs. It will create a whole range of excellent career opportunities. And it will have an immediately positive impact on the economic health of our great country.

I have devoted most of my working career to aviation. I have watched with sadness and frustration the destruction of an industry because of a product liability environment that defies reasonability. Claims just go on and on despite the fact that the operational safety record of general aviation aircraft has achieved new records almost every year for the past 25 years.

This is a simple piece of legislation which eliminates financial exposure only after the product has proven its

integrity. But while it is a simple, stra
the positive results will be immediate and will
time.

I appreciate this opportunity to speak in support of The General Aviation Revitalization Act of 1993 -- truly a meaningful and critical piece of legislation which will have enormous long-term benefits.

AIRCRAFT ELECTRONICS
ASSOCIATION

U.S. HOUSE OF REPRESENTATIVES
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
THE SUBCOMMITTEE ON AVIATION

HEARING: H.R. 3087, GENERAL AVIATION REVITALIZATION ACT OF 1993

October 27, 1993
2261 Rayburn House Office Building
Washington, DC

Testimony By:
Monte Mitchell, President
Aircraft Electronics Association
13700 E. 42th Street Terrace
Independence, Missouri, 64055
816-373-6565

Mr. Chairman and Members of the Aviation Subcommittee, I am Monte Mitchell, President of the Aircraft Electronics Association. It is indeed a great pleasure to be here among such a distinguished group of aviation experts to discuss with you, the Members of the Aviation Subcommittee, the opportunity we have to revitalize the general aviation industry through the Congressional enactment of H.R. 3087. H.R. 3087 simply states that no civil action for damages arising out of a general aviation accident may be brought against the aircraft or component parts manufacturers, if the accident occurred more than 15 years after the aircraft's initial customer delivery.

For your review, the Aircraft Electronics Association is the primary trade organization for FAA Part 145 certified repair stations which sell, install and maintain avionics and electronic equipment and systems in general aviation aircraft. AEA's membership also includes most manufacturers of civil aviation avionics and related equipment. Most general aviation airframe manufacturers enjoy membership in the AEA as do most post-secondary educational institutions which offer aviation related curriculum.

As you know and as you will hear again throughout this hearing, the once great American general aviation industry has been crippled by an unfair system of product liability laws which has devastated the U.S. production of light piston aircraft - the heart of the world's general aviation fleet. The 15-year statute of repose established by H.R 3087 will be the major stimulus that the U.S. general aviation industry needs to open aircraft production lines and component parts manufacturing facilities. This will create tens of thousands of new, stable, high paying, private sector manufacturing, engineering and related support jobs. These new jobs will help grocery stores, barber shops and other community businesses, as well as, expand local, state and federal tax revenues through payroll, sales and related taxes. New aircraft production will allow the industry to take advantage of American design and engineering ingenuity to fuel new advanced technology R & D programs. The production of new aircraft and the development of advanced avionics will allow our industry to regain its competitive position both at home and abroad. In this manner, we can expand our contribution to the American economy and, again, become a major factor in improving our balance of trade.

As you can see from the description of our membership, AEA members represent the front-line businesses and employees who, along with their valued aircraft customers, depend on a steady flow of general aviation aircraft for their business and family livelihoods. However, over the past decade, each one of these businesses have had an unfortunate element in common. I don't know of any AEA member company that has not suffered severe economic consequences as a result of this unfair product liability situation. Thousands of jobs have been lost and will continue to evaporate at our member's facilities as business stagnates under the weight of unreasonable product liability costs which is the single most important factor contributing to the steep decline in the U.S. production of general aviation aircraft - A decrease from 18,000 aircraft in 1978 to fewer than 900 in 1992 and the number will be even lower this year.

Even in its depressed state, the general aviation avionics sales, installation and service market is a large economic contributor to our economy and is valued at approximately $1.5 billion. The room for expansion is tremendous considering the large pent-up demand for light aircraft in this country. This demand will not be filled by American companies as long as we allow lawyers to moonlight as pickpockets looking deep and endlessly into the financial pants of the original manufacturers.

We recognize that at this time, the original aircraft and component parts manufacturers absorb the major financial costs of product liability litigation and damage awards. But we are not looking for a free ride in the retrofit marketplace as was suggested in an October 19, 1993 Wall Street Journal article. In this article, an aviation plaintiff's attorney stated that "the bill's (H.R. 3087) passage may help manufacturers but will hurt .... maintenance shops....because passengers and customers will be suing them for larger amounts of money". This is speculation by a lawyer who can't create jobs. However, he can continue to fleece the industry as long as we allow him to unfairly utilize the judicial system to obtain his contingency fees at the fatal detriment of the general aviation industry which has a safety record that is the envy of the world.

As you know, general aviation aircraft are altered significantly over their lengthy lifetime. AEA members constantly retrofit new avionics into aircraft and systematically maintain and service existing avionics as well as perform other alterations to airframes. In fact, we estimate that a general aviation aircraft has a complete turnover in its avionics package every eight years. This, combined with the periodic airframe and engine alterations made to the aircraft, creates what amounts to a totally different aircraft from the one which originally rolled off the assembly line 15 years before.

AEA members have always accepted responsibility for the quality of the work they performed. H.R. 3087 does not change this situation. We believe, and H.R. 3087 guarantees, that everyone who alleges an injury in a general aviation accident will have access to the court system to pursue appropriate judicial remedies. H.R. 3087 will hold all entities involved in the manufacturing, installation, alteration and service of the aircraft and its equipment liable for their workmanship throughout a rolling 15-year period. This is fair and reasonable and whatever "bump" our members may see in liability insurance premiums is well worth the alternative which is the collapse and disappearance of the U.S. general aviation industry.

The Aircraft Electronics Association is asking you to support a simple and fair 15-year statute of repose. This will limit manufacturer's liability to a reasonable time period, reduce cost of new airplanes and create thousands of jobs. The President's Airline Commission was convinced that a viable American general aviation industry is an absolute necessity for a stable and financially sound U.S. airline industry when they strongly recommended the enactment of a 15-year statute of repose for general aviation manufacturers. Equally important, H.R. 3087 has the support of the entire general aviation community: manufacturers, maintenance facilities, labor as well as all consumer groups representing aircraft owners and pilots. Today, I urge you to recognize this strong and comprehensive support and I ask you for your support to revitalize the general aviation industry by enacting H.R. 3087.

Thank you for the opportunity to present this testimony on H.R. 3087. Mr. Chairman, if you or any other Committee Members have any questions, I will answer them at this time.

NATIONAL
BUSINESS AIRCRAFT
ASSOCIATION, INC.

1200 Eighteenth Street NW
Washington, DC 20036-2598
Telephone: (202) 783-9000
FAX: 202 331-8364

STATEMENT OF
JOHN W. OLCOTT
PRESIDENT
NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.
BEFORE THE SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
H.R. 3087
THE GENERAL AVIATION REVITALIZATION ACT OF 1993

WEDNESDAY, OCTOBER 27, 1993

9:30 A.M.

2261 RAYBURN HOUSE OFFICE BUILDING

Mr. Chairman, members of the subcommittee, good morning and thank you for this opportunity to testify on an issue so critical to the future of the aviation community.

I am Jack Olcott, president of the National Business Aircraft Association. NBAA represents thousands of companies which operate aircraft in the conduct of business or provide business aviation products and services. Together, our member companies generate annual revenues of over three trillion dollars—a number that is over half of the gross national product—and employ more than 16 million people worldwide.

NBAA joins the General Aviation Manufacturers Association, the International Association of Machinists, the Aircraft Owners and Pilots Association, the President's National Commission to Ensure a Strong, Competitive Airline Industry, and many others, as strong supporters of H.R. 3087.

You might wonder why we, as aircraft operators, would be so interested in an issue which, on the surface, appears to affect just aircraft manufacturers. Well, we are greatly affected, for two important reasons.

First, we are today experiencing real financial and operational hardships as a result of this country's product liability laws, hardships which have hobbled a once world-leading industry. Specifically, for us as aircraft operators, the cost of maintaining the aircraft we fly has risen substantially due to product liability awards and the cost of their legal defense. As a result, aircraft parts are, in many cases, are much more expensive or simply not available. Piper Aircraft, for example, which carries a long tail of liability exposure as a result of over 70 successful years of aircraft production, no longer is readily able to supply parts for most of the more than 70,000 Piper aircraft still flying. Cessna, Beech and others are similarly affected.

Secondly, for the future, we are very concerned about the innovation stifled by product liability costs. While product innovation continues at the higher end of the market, innovation in mid and lighter weight aircraft design and manufacturing has been decimated. The availability of new training aircraft is acutely alarming. In what aircraft will we train future pilots? Cessna, Piper and Beech used to supply the lion's share of the world's training aircraft. Today, because of our product liability laws, France is now the leading supplier of training aircraft in the U.S. And without new, piston-powered single, twin-engine and cabin class twins being produced in this country because of the present product liability laws, these indigenous industries may vanish completely. Without this legislation, aircraft like these will be built, but they probably will come from offshore manufacturers.

This decline in our community is a fairly recent phenomenon. Since the early 1970s, when trial lawyers discovered the lucrative business of convincing juries that general aviation manufacturers have deep pockets and can be forced to pay enormous settlements to their injured clients, the cost of liability claims has risen alarmingly. With consumers paying the bill, questionable suits have been filed and lots of money has flowed from general aviation manufacturing and service organizations to lawyers. Relatively little of the settlements reach the injured parties. Some examples...

- Cessna Aircraft was sued and paid thousands of dollars to a pilot who crashed his Cessna 195 due to water in an fuel tank. The pilot failed to use wing tank drains after the airplane was parked outside during four days of extremely heavy Florida rains.
- Piper Aircraft and other manufacturers were ordered to pay $2.5 million in damages after a modified Super Cub towing a glider collided with a van parked at the end of a runway in New Mexico. The van had been deliberately parked there to discourage the takeoff of the aircraft, which had its front seat removed to make way for a large cinema camera mounted in front of the pilot. Despite the alteration, the plaintiff successfully argued that the manufacturer was responsible for the lack of forward visibility and crashworthiness. It should be noted that the aircraft was designed to be piloted from the front seat.
- Cessna was sued and ordered to pay $1 million to a severely injured passenger after a pilot defaulted on a $750,000 judgment because he failed to inform his insurance company of the accident. The pilot, who had illegally overloaded the aircraft, lost control and crashed into a building at a California airport. The injured passenger, the third occupant in a two seat trainer, was a small boy illegally occupying the aircraft without a seat or restraint system who sustained a brain injury when he ejected through the windshield and struck his head on a steel beam inside the building.
- Unison Industries, makers of aircraft ignition systems, spent $10,000 clearing its name in a Hawaii crash case where its product was not even on the aircraft.
- After a two-year court battle in California, Piper received a favorable verdict in a crash case where the pilot of a Super Cub tested positive for cocaine. Even though the jury found the pilot at fault, Piper paid nearly $1 million to defend itself.
- Cessna and several component manufacturers were sued for $4.5 million in a case involving a drunk pilot. The pilot, flying from Tennessee to Louisiana on a clear day, ran out of fuel and crashed his Cessna 152. Three hours after the crash, his blood alcohol level was 0.2 percent. The FAA

allows a maximum of 0.04 percent. After four years of litigation, the suit was settled for $50,000.

As interpreted by the courts, product liability applied to general aviation is simply a lottery funded by the general aviation community and promoted by lawyers. Anticipating great winnings, injured parties or their estates buy into the program. And like lotteries everywhere, the biggest beneficiaries are those promoting the program and selling the tickets. Injured parties collect only about 17 percent of all dollars spent on product liability and usually must wait years for that compensation. Over 80 percent goes to the legal profession.

While lawyers are the biggest winners in the liability lottery, the biggest loser is the general aviation community. We have lost the entry level training aircraft that stimulate growth of our community and promote interest in general aviation as a business tool. We suffer significantly higher costs of operation. We are forced to pay more for liability insurance and aircraft parts.

Clearly, as applied to general aviation, our nation's present system of product liability is broken. It does a very poor job of satisfying its intended and worthy purpose—to compensate, in a timely manner, innocent parties injured due to the negligence of manufacturers. If product liability is meant to force product improvements, the termination of defective designs and their replacement with better products, it has accomplished the opposite. It has killed incentives to produce light aircraft and perpetuated older designs. On all counts, our grossly inefficient product liability system has failed.

The Glickman-Hansen Bill brings some semblance of reason to this issue. The basis for the bill is the simple logic that if a product has functioned satisfactorily for 15 years, it has demonstrated that its original design is not defective and therefore not subject to a liability suit. Satisfactory service over a long period should be sufficient evidence that the product reflected the existing state-of-the-art and that the manufacturer met the legal obligation to provide an appropriate design at the time of delivery.

We strongly urge your support for this long overdue measure.

General Aviation
Manufacturers Association

Suite 801
1400 K Street, N.W
Washington, D.C. 20005-2485
(202) 393-1500

Statement
Edward W. Stimpson
President
General Aviation Manufacturers Association
Before the
House Public Works and Transportation
Subcommittee on Aviation
on
H.R. 3087
The General Aviation Revitalization Act of 1993
October 27, 1993

Mr. Chairman and members of the Subcommittee. Thank you for scheduling these hearings on the General Aviation Revitalization Act of 1993, H.R. 3087. We are heartened by your personal support as well as the strong support by members of the Subcommittee.

This legislation presents a rare opportunity. We can begin restoring a once-proud U.S. industry, put tens of thousands of people back to work, improve U.S. competitiveness, and preserve the U.S. technology base. All at no cost to the U.S. taxpayer. And better yet, this legislation enjoys the full support of all general aviation consumer groups and others in the aviation community. This includes the airlines, airline pilots, and importantly, the International Association of Machinists (IAM) and the National Commission to Ensure a Strong Competitive Airline Industry.

Statement of Edward W. Stimpson
October 27, 1993

Accompanying me this morning are several industry leaders: Russell W. Meyer, Jr., Chairman and Chief Executive Officer, Cessna Aircraft Company; Charles M. Suma, President and Chief Operating Officer, Piper Aircraft Corporation; and Frederick B. Sontag, President, Unison Industries. Each will detail the importance of this legislation and how its passage is an important step in revitalizing the general aviation industry.

But I would first like to "set the scene". I'll explain our problem, detail the dramatic impact product liability has had on our industry, and then articulate why a fifteen year statute of repose for general aviation aircraft makes sense.

THE PROBLEM: AIRPLANES THAT SEEM TO LAST FOREVER

Under our current legal system, if the Wright Brother's first aircraft was flying today (after 90 years), the Wright Brothers could still be found legally responsible for an accident allegedly caused by the original design of their aircraft. They may not have even seen their product for 90 years. It may have been maintained by hundreds of different people, and modified (legally and illegally) many times over its life. It wouldn't matter if the National Transportation Safety Board (NTSB) investigation concluded that the accident was not related to a design problem. It wouldn't matter if the accident was caused by the failure of a component that had been replaced many times since it left the factory. It wouldn't matter if the failed component was an unauthorized replacement part. The Wright Brothers would still be liable.

While this anecdote is certainly hypothetical, it is, unfortunately, an accurate portrayal of today's general aviation product liability problems. General aviation manufacturers will support their products over the entire product life. But after an aircraft has flown for fifteen years, allegations regarding original design defects should be prohibited.

The general aviation fleet is remarkably old. The average age of a single-engine airplane in the United States is 27 years, and one third of the U.S. fleet is over 32 years old. This fact is a tribute to our aviation regulatory system, including Federal Aviation Administration (FAA) design and certification standards, manufacturer's production standards, and the dedication of the operators and those who maintain and service airplanes.

Because of these factors, the general aviation fatal accident rate has been steadily declining, down 54 percent just since 1960. The industry has also adopted improved pilot training and education, new technology, and safer products, all of which contributed to this improvement. We are not resting on our laurels, we know we can do even better.

But one thing is certain, general aviation's relatively recent product liability problems are unrelated to our long-term, improving accident history. This fact was confirmed in a study on product liability and general aviation safety by the Brookings Institution which concludes: "... no definite correlation between improved aircraft safety and product liability could be found."

PRODUCT LIABILITY'S TOLL ON THE GENERAL AVIATION INDUSTRY

Product liability's toll on general aviation has been enormous and painful.

Financial Costs are Sizeable. In 1986, GAMA surveyed the industry and found that product liability costs (paid claims and out-of-pocket expenses) to the general aviation manufacturers were $210 million. Seven years earlier, these costs were only $25 million. Since 1986, our industry has completely restructured, making direct cost comparisons with our 1986 survey inappropriate. Cessna no longer makes piston aircraft, and Piper is still in bankruptcy. Many manufacturers are self-insured or have very high deductibles.

Manufacturers continue to experience product liability costs that are an enormous financial burden. Several will testify to the fact that product liability is the reason entire production lines have been closed. American General Aircraft Company stated that next to materials, product liability costs were the largest component of an aircraft's price, adding as much as a third.

Aircraft Shipments Down Over 95%. For many years the U.S. general aviation industry was the world leader. Today, the piston-engine airplane segment of our industry is nearing extinction. Piston airplane shipments have precipitously dropped from just over 17,000 units in 1978 to 551 units last year, a decline of over 95 percent. This year, piston-airplane shipments will be even lower, perhaps reaching only 450, another record low.

Over 100,000 Jobs Lost. This drop in aircraft production has devastated employment in our manufacturing, sales, service, training, and other related industries. Total industry employment has dropped by approximately 100,000 jobs over the past ten years. Employment in the general aviation manufacturing sector alone is down 46 percent, but employment at companies producing piston engines has dived 74 percent. The number of Fixed Base Operators, which sell, service, and maintain aircraft, has declined 55 percent.

These jobs were not centered in any single region of our country. They were lost across the nation, in every state, in every city, town or village that is near an airport or was the home for one of the literally thousands of companies that no longer provide parts and services for the general aviation industry.

New Pilots Down 61 Percent. An unfortunate fallout of product liability has been a precipitous drop in student pilot training. This year, fewer people will begin flight training than any time since 1960. Recently, a FAA Blue Ribbon Advisory Panel issued a report entitled "Pilots and Aviation Maintenance Technicians for the 21st Century". It points-out potential shortages of well qualified pilots and mechanics later in the decade. The panel urged Congress to take action on liability reform for general aviation. It notes that this would help make the U.S. industry competitive with foreign manufacturers and stimulate the production of new training aircraft in the United States.

U.S. Trade Adversely Impacted. The U.S. general aviation aircraft industry has historically been a large exporter. Approximately 30 percent of general aviation aircraft produced have been exported. With production lines closed, this important contribution to the U.S. balance of trade has been lost. In 1978, the industry exported nearly 4,000 aircraft. Last year it exported only 353 airplanes, a decline of 93 percent.

Currently, no two-place trainers are being manufactured in the U.S. Foreign manufacturers of training aircraft are aggressively marketing products in the United States. (Aircraft from France and Germany are entering the U.S. market, and they have announced plans to expand production.) Several new manufacturers have considered manufacturing outside the U.S. in order to reduce product liability risks. In 1980, there were 29 U.S. piston aircraft manufacturers and 15 foreign. In 1992, those numbers were reversed: 9 U.S. and 29 foreign manufacturers.

While there have been many other factors adversely affecting the manufacture of piston-powered airplanes, (such as prolonged global recession, an active used aircraft market, and changes in the tax laws) product liability is the single most detrimental factor. It acts as an underlying cancer, eating-away at the general aviation industry.

A STATUTE OF REPOSE MAKES SENSE FOR GENERAL AVIATION

Federal Regulation Is Pervasive. Since the Committee authorizes FAA programs and has oversight, it is well aware of FAA's role in certification and regulation. A manufacturer must comply with extensive federal regulations and standards in the design and production of an aircraft. Each aircraft has a federal airworthiness certificate and must be operated and maintained in accordance with detailed federal rules. Pilots must meet federal standards and receive a medical examination from a federally approved medical examiner. The NTSB investigates general aviation accidents. The only area not covered by federal standards is product liability.

H.R. 3087 Is Focused. H.R. 3087, in contrast to previous general aviation liability reform legislation, addresses only one single issue -- the length of time a general aviation manufacturer is held liable for an alleged design defect. Other reform proposals, such as joint and several liability and punitive damages, are not addressed.

New Components "Start The Clock" Over. Aircraft parts and components are constantly being replaced and overhauled. What appears to be an old airplane is actually an assembly of new parts and components that, if inspected and maintained properly, can operate just as safely as a new aircraft. Consequently, because of this stringent federal regulation, general aviation airplanes stay operational almost indefinitely.

H.R 3087 would not allow a civil action against the aircraft manufacturer for damages arising out of a general aviation accident if the accident occurred more than fifteen years after the aircraft was delivered to the first purchaser. In the case of component parts, no civil action may be brought more than fifteen years after the date of replacement or addition. Therefore, if a new component is placed on the aircraft, the statute of repose starts anew for that component, making it a "rolling" statute of repose.

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An aircraft that was first sold fifteen years ago is not a thoroughly fifteen year-old airplane. Nearly all of the major components will have been replaced several times during that period. As aircraft components must be inspected and maintained according to federal regulation, critical aircraft components will almost always fall within the fifteen year period, and the manufacturer would be liable for any design problems.

Our studies show that approximately 50 percent of lawsuits filed involve aircraft that were first sold more than fifteen years ago. Preliminary data indicates, however, that the actual component that allegedly caused the accident in these lawsuits, in most cases, was less than fifteen years old. Most major components, such as engines, generators, and avionics, are replaced several times during the first fifteen years of an aircraft's life.

Design Problems Are Normally Discovered Early. Over 95 percent of aircraft design problems are discovered and resolved within seven years of when an aircraft model is first introduced. A fifteen year statute of repose would therefore provide a comfortable margin of liability coverage for the consumer who purchases even the first airplane of a production run. Subsequent airplanes would benefit from the operational experience of previous production, adding an even larger margin of liability coverage. This makes it extremely unlikely that a design problem would actually cause an accident fifteen years after the time the aircraft is first sold.

Statement of Edward W. Stimpson
October 27, 1993

SUMMARY

The General Aviation Revitalization Act will stimulate the general aviation industry. New aircraft will be produced. Production lines will be opened. In the short term, hundreds of people will start working at skilled, well paying jobs. In the longer term, thousands more will find work.

H.R. 3087 will revitalize general aviation, and should be enacted.

1. Federal regulation over the industry is pervasive.
2. HR-3087 provides a simple, understandable yet effective answer to industry product liability problems.
3. The problem is serious. An industry has been decimated.
4. Aviation consumers and workers strongly support HR-3087.

We urge your prompt action and appreciate your consideration.

"GENERAL AVIATION REVITALIZATION ACT OF 1993"

STATUTE OF REPOSE

ENDORSED BY:

- THE AIRLINE COMMISSION
- ALL GENERAL AVIATION CONSUMER GROUPS
- THE NATIONAL AVIATION ASSOCS. COALITION
- NATIONAL & LOCAL LABOR UNIONS
- BROAD-BASED CONGRESSIONAL COALITION

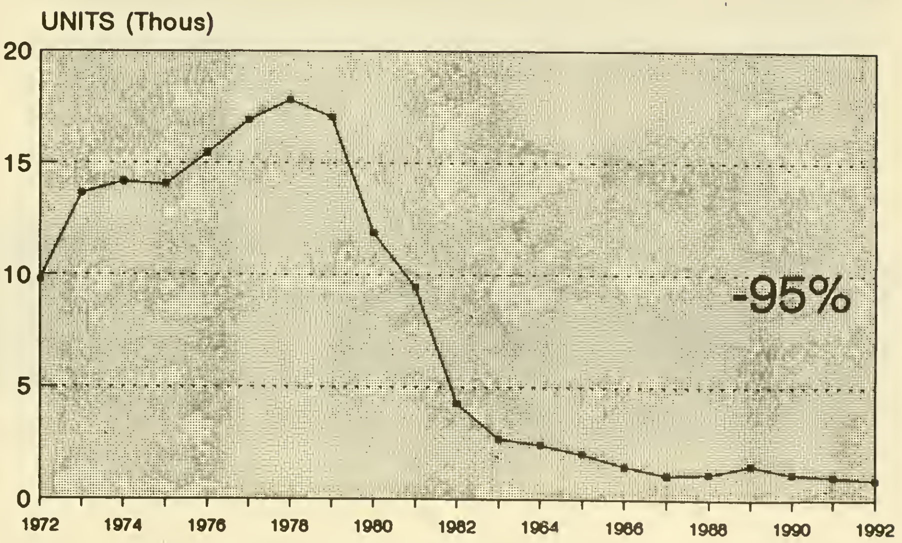
PRODUCT LIABILITY'S TOLL

OVER 100,000 JOBS LOST IN GENERAL AVIATION OVER THE PAST TEN YEARS

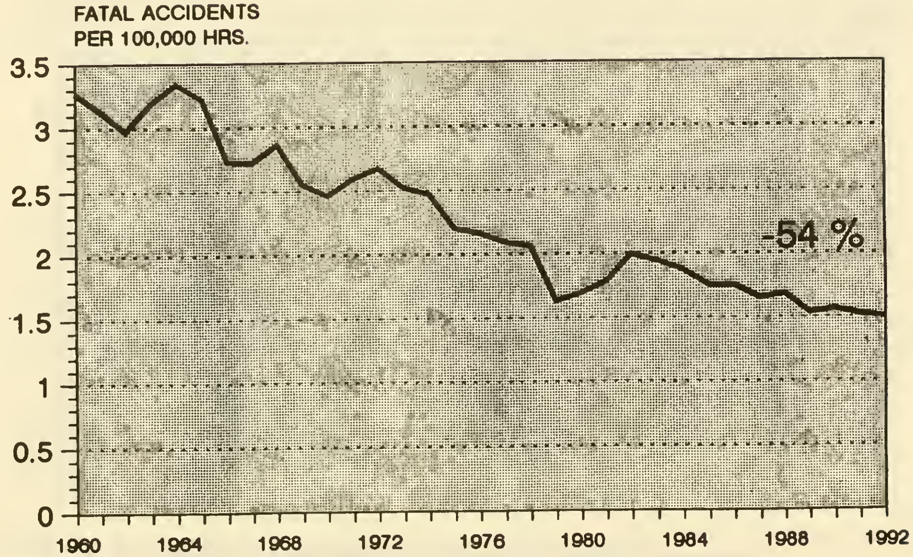
- AIRCRAFT MANUFACTURERS - EMPLOYMENT DOWN 46 PERCENT
- PISTON ENGINE MANUFACTURERS - EMPLOYMENT DOWN 74 PERCENT
- FBO'S - NUMBER DOWN 55 PERCENT
- TRAINING - STUDENT PILOTS DOWN 61 PERCENT
  (NO TWO-SEAT TRAINING ACFT. BEING MADE IN THE U.S.)
- PISTON AIRPLANE EXPORTS - DOWN 93 PERCENT

AIRPLANE SHIPMENTS DOWN 95% SINCE 1978

U.S. FACTORY SHIPMENTS OF GENERAL AVIATION AIRPLANES



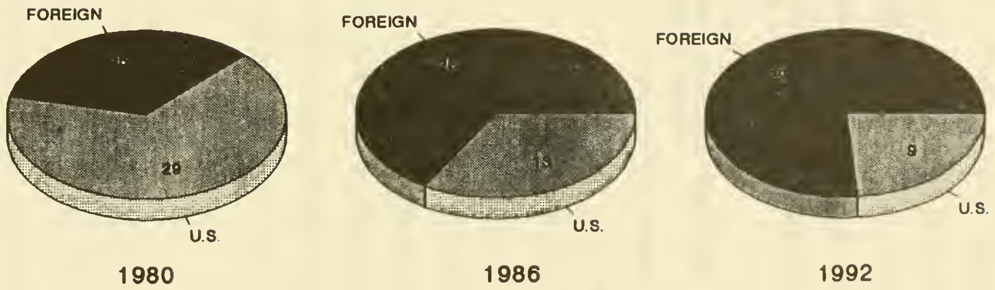
GENERAL AVIATION'S IMPROVING SAFETY RECORD



Source: NTSB

PISTON AIRPLANE PRODUCTION HAS MOVED OUT OF THE U.S.

Number of Piston Airplane Manufacturers - Foreign and Domestic



Statement
Frederick B. Sontag
President
Unison Industries, Inc.
Before the
House Public Works and Transportation
Subcommittee on Aviation
on
H.R.3087
The General Aviation Revitalization Act of 1993
October 27, 1993

Thank you, Mr. Chairman.

My name is Rick Sontag. I am President of Unison Industries, with manufacturing facilities in Rockford, Illinois, and Jacksonville, Florida. We employ 400 people in the production of components for the aviation industry. One of our major products is magneto ignitions for small piston engine airplanes. Magnetos supply the spark to run the engine of the plane. Chances are if you have flown in a small airplane, your plane's engine was kept running by our products.

The market for new small piston engine airplanes is severely depressed, due in large part to product liability. Sales of piston engine aircraft averaged 13,000 per year from 1965 to 1982. In 1993, the industry will deliver less than 500. This dramatic drop in sales, not only affects the airframe manufacturers, it impacts thousands of small companies like Unison Industries which depend upon new airplane sales for their livelihood. Because of the drop in our business, our company employs less than 50 percent of the people in the production of magneto ignitions as we did in 1979. Aviation related companies have lost more than 100,000 jobs in the same time period. Sales of Unison magnetos to airframe manufacturers have gone from a high of 35,000 units in 1979 to a low of 1,000 units today.

Since acquiring our company in 1980, I've dealt with countless business challenges-- organizational and people problems, financing, engineering complexities and of course, the decimation of the U.S. general aviation industry. But none has been as frustrating as what I've had to deal with in the area of product liability. Since we are a small company, I've been personally involved in nearly every suit. This has given me a sense of what is happening in this area.

Our company's experience with general aviation parallels that of other companies. While we sell products for all forms of aircraft--from two place trainers to jumbo 747's--nowhere is our product liability exposure greater than in general aviation. Unison's product liability insurance expense for general aviation is eight times greater per dollar of sales than for all other aviation markets the company services. Of the over 35 major product liability claims we have had the last 13 years, all involved general aviation aircraft. We have yet to sustain a single product liability claim for a commercial airline or military application. It is our general aviation experience which has provided us with real insight into how companies are being changed when they try to cope with product liability.

Unison Industries own experience shows that it is very easy to be caught in a product liability lawsuit even when your product is operating safely and is not the cause of any damage. Of the 35 lawsuits that we have been involved in during the past 13 years, our research and analysis has shown that in only one case out of the 35 were the damages alleged in the claim potentially caused by our product. You can argue with our analysis of each specific case, but the evidence is strikingly clear. It is just too easy to be sued in an aviation accident if you are the manufacturer of a critical component. In most states, all you need is the right set of words in the claim and the claim will withstand any motion for dismissal or summary judgement. And when you are sued, you can usually count on spending substantial sums even if you are innocent.

The product liability crisis has forced our product liability insurance cost to triple over the last ten years. This happened in spite of our having a greatly improving claims record over that period. We cannot pass this premium increase on totally to our customers, and so our operating budget has to be reduced. Our employees end up paying for it!

Product liability creates an extra level of overhead and complexity for a company. It is more than just the direct cost and use of resources for litigation defense. It has an effect on a company's infrastructure, personnel, and operations. All these extra indirect costs have to be paid for somehow, usually in the form of product price increases that eventually effects the end-user. This extra layer of bureaucracy created by product liability reduces a company's flexibility and ability to react in the marketplace.

One effect of product liability we have noticed is its impact on product strategies. This is especially true in general aviation. It is the uncertain product liability environment that has made the manufacture of light aircraft uninsurable and thus incapable of attracting sufficient investment to sustain growth and innovation. The results are stifled investment, growth, and innovation.

The single greatest cause of this uncertainty is the long product liability "tail" of general aviation products. Unlike foreign competitors who have only entered the marketplace in recent years, American manufacturers are burdened by potential liability for half a century or more of production. A few years ago we scrapped an advanced electronic ignition project because we were afraid to pioneer such a liability risk. Today our company will only undertake technologically innovative aircraft product development if we have the sponsorship of a larger company. We cannot afford to take the liability risk alone.

Limiting this "tail" would reduce overhead, lower prices, and make more capital available for research and development, better and safer new designs, and aftermarket improvements to older designs.

Depressed production rates over a period of many years combined with the opening of new markets in emerging countries has led to an increased demand for general aviation products. A 15-year statute of repose will provide a level playing field on which

American manufacturers can compete with foreign manufacturers to meet this demand. Cessna's commitment of restarting production of piston engine aircraft and Piper's increased production will have a positive impact on us as well as the thousands of suppliers throughout the United States. This is a simple piece of legislation, much narrower in focus than previous bills, however, passage will help revitalize the entire industry by creating new jobs and new technology that will help the U.S. regain its worldwide leadership in aviation.

We have had nearly a generation to learn the signs of crisis in our industrial sectors. We have had the examples of shipbuilding, steel, automotive, and consumer electronics to teach us how we can lose our competitive advantage in an economic sector we once dominated. The same thing can happen to the U.S. general aviation industry, if nothing is done and done quickly.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify before you on H.R.3087. I would be happy to answer any questions.

PIPER

STATEMENT
CHARLES M. SUMA
PRESIDENT AND CHIEF OPERATING OFFICER
PIPER AIRCRAFT CORPORATION

BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION
SUB-COMMITTEE ON AVIATION
ON
H.R. 3087
THE GENERAL AVIATION REVITALIZATION ACT OF 1993

OCTOBER 27, 1993

PIPER AIRCRAFT CORPORATION • 2926 PIPER DRIVE, VERO BEACH, FLORIDA 32960 • TEL (407) 567-4361

Mr. Chairman and Committee members, it is indeed an honor to come before the House Public Works and Transportation Subcommittee on Aviation to testify on the General Aviation Revitalization Act of 1993. While preparing for this testimony, I was reminded of a speech I heard as a child, given by then President John F. Kennedy in which he made this notable quote "Ask not what your country can do for you, but what you can do for your country." A variation of this quote is germane to today's testimony: "Ask not what Congress can do for general aviation manufacturers, but what can general aviation manufacturers do for the country."

To understand what general aviation can do for the country, one must comprehend what has occurred in the industry over the past twenty-three years. During the period 1970 through 1979 American based general aviation manufacturers produced 128,637 piston engine aircraft. Compare this to the meager 2,050 piston engine aircraft produced from 1990 through mid 1993; a reduction from approximately 13,000 units per year to approximately 500 units per year. The number of American based piston aircraft manufacturers has declined from 29 in 1980 to 9 today.

Factors which contributed to the decline in the aircraft market during the 1980's were: ever increasing inflation, rising interest rates, and spiraling fuel prices, all of which had a direct effect in increasing acquisition and operating costs. However, the primary and most devastating reason for the severe decline in piston engine production and the fostering of offshore aircraft manufacturing companies was the dramatic rise in product liability costs. Expenses incurred in defending frivolous product liability lawsuits triggered escalating premiums for liability insurance for the large fleets of existing aircraft manufactured as far back as the early 1930's. Piper alone manufactured in excess of 135,000 aircraft by 1980 with an active fleet of 65,000 domestically and 30,000 internationally. This product liability "tail" is the primary cause of high product liability costs. American manufacturers are in effect being punished for their past success.

Plagued with ever increasing premiums and larger deductibles, manufacturers were forced to reallocate more funding to these costs and less to research and development. Piper's premiums soared to record highs in the mid 1980's with the last insured year premiums in excess of $25,000,000 with a $15,000,000 deductible or over $40,000,000 per annum of product liability cost against $100,000,000 in revenues. The dramatic effect on the consumer was twofold: First, the cost of general aviation products has increased significantly. Second, due to less research and development funding, only minor product refinements have been offered in the marketplace in the past decade.

The last new product design introduced by Piper was the Malibu in 1983. This is still one of our most popular models today and the last new product design from Original Equipment Manufacturers of piston aircraft. An innovation in piston engine design, the Malibu was intended to be the basis of the new product line for Piper, ushering in a new generation of products for the consumer which introduced new technologies to enhance safety, pilot proficiency and passenger comfort. I mention this not as an advertisement for the Malibus but to emphasize the importance of new product innovations to maintain a strong competitive industry. The only competition for the Malibu series has appeared in the form of a look-a-like turbo-prop the, TBM-700, designed and manufactured by a company funded by the French Government known as Aerospatiale. Although not a direct competitor, the TBM-700 offers the Malibu owner an option of increased performance and size. It is sad to me that due to the lack of R & D funding in the American based industry this product came from a foreign company. On the horizon are other foreign competitors from European and Pacific rim countries who are actively working on new aircraft designs. They do not carry the burden of product liability costs for a half century or more of product manufacturing and will be able to capitalize on this as they introduce products in the U.S. in the future.

To summarize the effects of product liability on our industry, one could say it robbed us of our ability to be competitive through new product innovations. However; during these difficult times American manufacturers have never turned and run from their duty to provide technical support and parts for the existing fleet of products. If we had, we would have jeopardized the safety of the flying public and that is a responsibility we have always taken very seriously.

The effect of product liability was felt by everyone involved in aviation; however, no one has suffered more than Piper Aircraft Corporation. Although product liability was not the only reason Piper landed in bankruptcy in July of 1991, the uninsured posture the company was forced to take due to the cost of insurance made the company unfundable through traditional financing sources. When the company filed for bankruptcy, it had only 45 employees, less than $1000 in the bank and all production lines were idle. Two years later, while operating under Chapter 11 protection, the company has reorganized itself, now employing 360 hard working individuals. We completed Fiscal 1993 with 113 units delivered to produce revenues in excess of $48,000,000 and profits in excess of $6,000,000 fully burdened with bankruptcy costs. Although these numbers pale in comparison to the 1970's and 1980's in volume of units and revenue, you have to ask the question "What caused this remarkable turnaround?" The answers are a lot of hard work combined with protection from the costs and distraction of product liability. Also, during this time Piper has introduced two new model derivatives with resounding success in the retail marketplace. Although these programs were not the intensive product innovations or R & D I spoke of earlier, they prove that the consumer needs and desires new products.

The primary hurdle to Piper's emergence from bankruptcy is finding a solution to the problems generated by the company's product liability "tail". It is no secret to anyone involved in Piper's bankruptcy case, including the judge, that passage of this legislation would increase the value of Piper and its assets in thus increase our ability to pay our unsecured creditors.

Now let us focus on what our industry could do for the country, given the opportunity available in the General Aviation Revitalization Act of 1993. General aviation can create new jobs with no cost to the Government or the taxpayer through passage of HR 3087. New jobs in excess of 25,000 manufacturing, blue and white collar, middle income level positions could easily be created within five years of the passage. Typically, these manufacturing based jobs have an economic factor of 1 to 4 , creating residual jobs in support industry or product usage such as airports, fixed base operators and maintenance facilities. I believe that the bill's passage will cause insurance companies to eventually feel comfortable about insuring fleets under 15 years old. When that happens, rates will come down, and we'll be able to spend the money on research and development. None of the manufacturers are trying to cut and run from their responsibility to the existing fleet, but we are looking toward Congress to create a level playing field so everyone may benefit from the jobs that are created from this small piece of legislation.

Thank You.

ADDITIONS TO THE RECORD

General Aviation
Manufacturers Association

Suite 801
1400 K Street, N W
Washington, D C 20005-2485
(202) 393-1500

November 1, 1993

The Honorable James L. Oberstar
Chairman, Subcommittee on Aviation
House Committee on Public Works and Transportation
2215 Rayburn House Office Building
Washington, DC 20515-2308

Dear Mr. Chairman:

The General Aviation Manufacturers Association (GAMA), representing 50 companies involved in the manufacturer of general aviation aircraft, engines, avionics and component parts, has studied the content of GAO Report "GAO/RCED-93-155" with considerable interest. A number of highly successful transport aircraft certification programs are not covered in the GAO study, but are truly complex designs incorporating much, if not all, of the technology advances frequently alluded to in the GAO report. Gulfstream, Cessna, Beech, and Learjet, all GAMA members, have designed, certificated and produced in quantity, complex and high performance transport aircraft, and will continue to actively do so in the foreseeable future. These projects are all under the jurisdiction of the FAA Transport Directorate, and collectively encompass the technologies of glass cockpits, software controlled automatic controls, very high altitude, high MACH, and advanced composites.

The deficiencies detailed in the GAO report are, to a limited degree, a realistic assessment of current certification activities for fixed wing transport designs (FAR 25) and for the more sophisticated small aircraft designs (FAR 23). The report is unnecessarily negative in its criticism of the world's foremost aircraft certification authority, and ignores the abundance of outstanding accomplishments that FAA has helped foster.

Since 1926, with the Department of Commerce's certification basis set forth in Bulletin 7-A, the U.S., over the ensuing 67 years, issued ever increasingly responsive rules for certification. The result was that FAA, which came into being in 1958, was viewed as a dominant world airworthiness leader. Let us seek to maintain FAA's global leadership by taking the necessary steps, in partnership with FAA, to further modernize the certification process and improve FAA's technical recognition. GAMA recommends that the focus should be similar to that enumerated by GAO:

- More definition of effective staff involvement may be desirable for both certification and delegation monitoring.
- Certain additional National Resource Specialists (NRSs) are needed to form a critical mass of experts. These could be integrated effectively and efficiently into the type certification process.
- Management of the NRS program should be improved.
- More extensive and finely tuned technical training for FAA persons is needed to assure an appropriate level of FAA technical competence.
- A fresh look at delegation is needed with an aim to significantly increase the scope of this activity.

A more in-depth examination of these areas of focus is as follows:

FAA Staff Involvement and Delegation As new ideas and complex technologies are evaluated and introduced within the confines of a Cessna, Gulfstream, Learjet, Beech or Boeing, companies respond by reorganizing, recruiting, cntracting and putting qualified personnel in charge. Evolution of the new technology may span a considerable period before its formal introduction to FAA. GAMA's experience is that the FAA certification engineers are conscientious people who attempt to the best of their abilities to work within the defined certification system. For the most part, when confronted with a new technology, they step-up to the challenge and become a valuable component of the certification team effort. On the other hand, the implications for mandated minimum involvement are significant. If this minimum involvement is not given flexibility (i.e.: decisions based on the certifying engineer's judgment) this could have a significant restraining impact on small companies and smaller but potentially useful projects. Obviously, this judgment is based on technical competence and confidence both at the certifying engineer and the NRS level.

GAMA believes that a major contributor to the problems addressed in the report is also the FAA's convoluted and time-consuming decision making process. FAA tends to be somewhat bureaucratic and delays important decisions and functional improvements needed to keep pace with the changing world. It is the PROCESS, not always the person, that creates such a situation. There are many examples of significant rulemaking and advisory efforts that take many years to develop and implement while the industry moves ahead. A logical and major functional improvement, therefore, lies in increased delegation of certification activities to qualified firms and effective FAA monitoring of their performance. This action needs to be taken and, in fact, is under intense study now within the Aviation Rulemaking Advisory Committee.

A Delegation Working Group was established earlier this year in response to FAA's assignment. The GAO report refers briefly to its existence. The target date for completion of this monumental and complex task is December, 1994, at which time comprehensive regulatory and procedural recommendations will be available. Referral to FAA for FAR rule and procedures implementation would then follow.

NRS Program This program is an excellent concept and certain additional experts are needed to form the FAA's critical mass of technology experts. GAMA also believes the NRS's could be integrated effectively and efficiently into the type certification process.

The apparent lack of success of the present NRS program does not necessarily result from insufficient staff but rather their decentralization which makes management and technology application difficult. Consequently, certain NRS's spend too much time and energy pursuing their own agenda on technical issues, too much time in certification details, too little time on technology transfer to key FAA staff and too much time coordinating the details of proposed rule changes.

Procedures need to be developed to insure this "Cadre of Talent" is properly managed and utilized. GAMA encourages the FAA to develop a central command and effective communications with the Directorates.

Training It seems everyone wants training in a broad spectrum of interest. It's time to call a halt to these demands and for the FAA to clearly and succinctly spell-out training needs. Training costs money and complicates work schedules. But based on the average years of experience of FAA's certifying engineers given in the GAO report, a broad in-depth look is recommended.

The certification system has been viewed by many in the FAA as largely an administrative task that begins with defining rules and then reviewing documentation that demonstrates compliance with those rules. This, in our view, is a major reason why technical training for the average engineer has been a low priority item. The whole issue of FAA technical competence is tied to training and retraining certification engineers. Having the technical competence reside at a high level does not empower the certification engineer to do the job any better, faster, or to improve safety. Delegation to the firms will help. Additional NRS's will help, but even they need training. GAMA supports FAA's establishing the Advisory Training Group mentioned in the report, but questions if it is up to the job. Commitments need to be obtained from manufacturers, universities, and others to participate, and key need areas must be identified. Perhaps reorganization is needed to move administrative jobs into the technical world thereby providing additional properly trained manpower to work certification issues.

Training is always valuable, but it must be related specifically to industry requirements and methods. Hands-on training on aircraft, rotorcraft, engines, etc. should be mandatory. Many engineers hired by FAA come either directly from college or come from other government agencies. These personnel tend to become very conversant in regulatory matters but may have little understanding of actual aircraft manufacturing or operation.

A sense of urgency is needed to set up and implement a new approach to training.

Implementation of the above recommendations should improve the FAA Aircraft Certification Process. To this end, GAMA supports the deliberations of your committee and stands ready to assist in the process.

Sincerely,

Edward Stimpson

Edward W. Stimpson
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PAUL SCHOELLHAMER, *Chief of Staff*
SANTE ESPOSITO, *Chief Counsel*

U.S. House of Representatives
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUITE 2165 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4472

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JACK SCHENENDORF, *Minority Staff Director*

November 4, 1993

Honorable Carl Vogt
Chairman
National Transportation Safety Board
800 Independence Avenue
Washington, DC 20594

Dear Chairman Vogt:

Recently, the Aviation Subcommittee held a hearing on the General Aviation Revitalization Act (H.R. 3087). This legislation would establish a 15-year statute of repose, meaning that an injured person would be barred from suing a general aviation manufacturer if the aircraft were more than 15 years old.

Proponents of this legislation argue that NTSB investigations and statistics show that it is usually pilot error, or some factor other than a problem with the aircraft, that is responsible for the accident or injury. For example, one witness stated that "over 85 percent of the NTSB investigations ... show that [the accident was caused] by something other than the plane itself." Another witness, who had examined NTSB accident reports from 1983 to 1990, stated that "we looked at a long history of NTSB accident reports and how many were attributed to [a] defect of the airplane, and it is less than 1 percent."

In the Subcommittee's analysis of H.R. 3087, it would be helpful to know whether these characterizations of NTSB investigations and statistics are generally accurate and whether you agree that general aviation accidents are rarely caused by a defect in the aircraft.

Opponents of the legislation questioned the above statistics by challenging the value of NTSB investigations and reports. One witness stated that "when there is a general aviation crash, the NTSB calls the manufacturer and the component manufacturers and they come and participate ... not only in the investigation, but in the writing of the NTSB report." He concluded from this that when the NTSB gives the general aviation manufacturing industry a clean bill of health, that "bill of health comes in part with the assistance of the industry itself."

In our analysis, it would also be helpful if you could respond to the above testimony, especially the role played by the industry in the writing of the NTSB report.

Your response to the two issues described above would be most helpful in the Subcommittee's deliberations.

Thank you for your assistance.

/S/

William F. Clinger, Jr.
Ranking Member
Subcommittee on Aviation

National Transportation Safety Board
Washington, D.C. 20594

Office of the Chairman

November 23, 1993

Honorable William F. Clinger, Jr.
Ranking Republican Member
Subcommittee On Aviation
Committee on Public Works and
  Transportation
Washington, DC 20515

Dear Congressman Clinger:

This is in response to your November 4, 1993, letter regarding H.R. 3087, the General Aviation Revitalization Act.

A review of National Transportation Safety Board (NTSB) data for the period 1984 through 1988 confirms that in one percent of all accidents the manufacturer is listed as a cause or factor in the accident. Airframe or component system failures or malfunctions are listed as a cause or a factor in 5.3% of the accidents. When you add loss of engine power to the mechanical failure or malfunction category, the percentage increases to a total of 12.5% of all accidents. These categories combine causes attributed to the manufacturer and to their personnel responsible for maintenance. In 11% of the accidents, investigators recorded that a part failure or malfunction occurred, or an incorrect part was installed on the aircraft.

The Code of Federal Regulations, 49 CFR § 831.11, addresses who may be a party to the Safety Board's investigations, and manufacturers are one of the categories listed. It should be noted that the decision to designate a party representative is left to the discretion of the air safety investigator in charge of that investigation (IIC). Consideration is given to the type of accident, transmissions made by the pilot shortly before the accident, and reports from witnesses to the accident to determine whether a particular party representative is needed to assist in the investigation.

The factual report is written by the NTSB IIC. Although party representatives do not participate in writing the report, they are permitted by our rules to make submissions. In general, all or part of a manufacturer's submission is included in the public docket for the accident. The IIC also distributes drafts of the factual reports to all representatives to ensure the accuracy of the facts presented. It should also be noted that our rules allow the manufacturers to submit their recommended findings and causes for the Safety Board's consideration in determining probable cause.

While the parties, including the manufacturer's representative, participate in the fact gathering portion of the investigation, the analysis of the evidence and the weight applied to any aspect of the accident circumstances are the sole responsibility of the Safety Board and its staff. Nearly all of the Board's regional office investigators are highly experienced pilots with some engineering or maintenance expertise. Further, when it appears that a manufacturing, engineering or maintenance issue is a factor, the Board's Washington headquarters staff provides appropriate expert assistance to the IIC. The Board believes that its investigation process assures objectivity in the determination of probable cause.

The Safety Board's mandate and our status as an independent agency permits us to represent all of those involved in an accident impartially. The NTSB does not protect anyone who is found to be responsible for causing an accident. The Safety Board makes available to the public all federal information gained during the investigation. The Brief-of-Accident report, which contains the Board's analysis of the accident and the determination of probable cause is also public information. Board investigations are never closed, and remain open for the inclusion of evidence that may be presented at any future date. Our rules also contain procedures for interested parties to request reconsideration of probable cause.

If you have additional questions, please do not hesitate to contact us.

Sincerely,

Carl W. Vogt
Chairman

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ISBN 0-16-043922-1